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54403

**WATER
RESOURCES**

**REGULATIONS IMPLEMENTING THE NEW JERSEY
UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES ACT**

N.J.S.A. 58:10 A

INCLUDING

7:14B-1-13 AND 15

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New Jersey Department of Environmental Protection

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SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.1 Scope

This chapter shall constitute the rules of the Department of Environmental Protection for all underground storage tank facilities regulated by N.J.S.A. 58:10A-21 et seq.

7:14B-1.2 Construction

This chapter shall be construed so as to permit the Department to implement its statutory functions and to effectuate the purposes of the law.

7:14B-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1. To establish the Department's underground storage tank program;
2. To implement the registration requirements of the State Act;
3. To establish Initial Registration and Annual Certification fees;
4. To implement the technical requirements of the State Act;
5. To implement the reporting requirements of the State Act;
6. To implement the corrective action requirements of the State Act;
7. To implement the permitting requirements of the State Act; and
8. To protect human health and the environment of the State by ensuring sound underground storage tank management, thereby preventing, controlling, remediating and/or abating actual or potential groundwater contamination.

7:14B-1.4 Applicability

(a) This chapter applies to all underground storage tanks containing hazardous substances except as provided in (b) below.

(b) The following types of underground storage tank systems are exempt from the requirements of this chapter:

1. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building;

3. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a residential building;

4. Septic tanks installed in compliance with rules adopted by the Department pursuant to The Realty Improvement Sewerage and Facilities Act (1954), Pub. L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.);

5. Pipelines, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, Pub. L. 90-481 (49 U.S.C. 1678 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, Pub. L. 96-129 (49 U.S.C. 2001 et seq.), or intrastate pipelines regulated under State law as approved by the Department;

6. Surface impoundments, pits, ponds, lagoons, storm water or wastewater collection systems operated in compliance with N.J.A.C. 7:14A-1 et seq.;

7. Liquid traps or associated gathering lines directly related to oil and gas production and gathering operations;

8. Tanks situated in an underground area including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor;

9. Tanks situated in an underground area, including but not limited to, basements, cellars, mines, drift shafts, or tunnels if the storage tank is equipped with secondary containment, and is uncovered so as to allow visual inspection of the exterior of the tank;

10. Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this Chapter as set forth in (b)1 to 9 above, and 11 to 14 below;

11. Flow-through process tanks;

12. Wastewater treatment tanks;

13. Electrical equipment; and

14. Hydraulic lift tanks.

(c) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, 4.1(a), (l) and (m), 4.3(a), 7 and 8.

1. Tanks used to contain radioactive materials that regulated under the Atomic Energy Act of 1954;

2. Tanks that are part of an emergency generator system at nuclear power generator facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A; and

3. Sumps.

(d) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, 7 and 8:

1. Tanks used to store heating oil for onsite consumption in a residential building with a capacity greater than 2,000 gallons.

7:14B-1.5 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

7:14B-1.6 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Activity" means any one of the following:

1. Installation of a new underground storage tank system;
2. Closure of an underground storage tank system; or
3. Substantial modification of an underground storage tank system.

"Abandon in place" or "abandonment in place" means a tank rendered permanently nonoperational and left in the ground.

"Annual certification" means the yearly reregistration of a tank with the Department pursuant to this chapter.

"Annular space" means the space created between the primary and secondary container of a double-walled underground storage tank system.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Authorized government representative" means any person representing a municipal, county, State or Federal government agency which has been delegated authority by the legislature or Congress to perform inspections and/or investigations of underground storage tank system facilities and property.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Casing" means a pipe used to support the sides of a hole to prevent caving or the entrance of water or other fluids into the hole.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Close" or "closure" means the permanent elimination from service of any underground storage tank system by removal or abandonment in place.

"Commercial" means any activity involving a hazardous substance from an underground storage tank system including, but not limited to, the resale, distribution, processing and transportation of any hazardous substance, as well as the use of any hazardous substance to perform or carry out these or other activities that result in monetary gain.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

"Continuous monitoring" means a monitoring system that incorporates automatic equipment that can detect leaks and/or discharges without interruption.

"Corrosion" means the deterioration of a material by direct or electrochemical reaction with its environment.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles

of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a licensed New Jersey Professional Engineer as defined in N.J.S.A. 45:8-27 et seq.

"Daily" means at least five days per week.

"Decommissioning" means the excavating, cleaning, degassing, removal or abandonment in place of an underground storage tank system.

"Department" means the Department of Environmental Protection.

"Discharge" means the intentional or unintentional release by any means of hazardous substances from an underground storage tank into the environment.

"Discharge detection observation well" means an access point constructed of screen and casing used in conjunction with a monitoring system to detect a release of product or compound in the vapor or liquid phase which is stored in the underground storage tank system, for the operation life of the underground storage tank system.

"Discharge detection system" means a method of detecting a discharge of hazardous substances into the environment from an underground storage tank system.

"Double-walled tank" means an underground storage tank in which a rigid secondary container is attached to the primary container and which has an annular space.

"Electrical equipment" means underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

"Empty" means all hazardous substances have been removed that can be removed by direct pumping or drainage and no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the system remains, whichever is the smaller amount.

"Excavation area" means the area containing the underground storage tank system and backfill material and bounded by the above ground surface, walls, and pit and trenches into which the underground storage tank system is placed at the time of installation.

"Existing underground storage tank system" means an underground storage tank system for which installation has

commenced on or before September 4, 1990 and is not closed pursuant to this chapter. Installation is considered to have commenced if:

1. The owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

- i. A continuous on-site physical construction or installation program has begun; or,

- ii. The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss. These contractual obligations shall be for physical construction at the site or installation of the tank system which shall be completed within a reasonable time.

"Exposure assessment" means a study to identify all existing and/or potential receptors of contamination due to a release of hazardous substances into the environment.

"Facility" means one or more underground storage tank systems owned by one person on a contiguous piece of property.

"Farm tank" means an underground storage tank which contains or contained hazardous substances located on a tract of land devoted to the production of crops or raising animals pursuant to the Farmland Assessment Act of 1964, (N.J.S.A. 54:4-23.1 et seq.), and including fish hatcheries, rangeland, and nurseries with growing operations.

"Field constructed tank" means a tank constructed at the facility with a capacity of 50,000 gallons or more. Tanks which are factory-built and assembled in the field are not considered field-constructed tanks.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" means a hazardous substance that is present as a non-aqueous phase liquid.

"Hazardous substances" mean:

1. Motor fuel;

2. Petroleum products which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);

3. The hazardous wastes designated pursuant to:

i. Section 3001 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 (42 U.S.C. 6921); and

ii. N.J.A.C. 7:26-8;

4. The hazardous substances designated pursuant to:

i. Section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (33 U.S.C. 1321);

ii. Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. 96-150 (42 U.S.C. 9601); and

iii. The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; and

5. The toxic pollutants designated pursuant to Section 307 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (33 U.S.C. 1317).

"Heating oil" means any grade of petroleum product including, but not limited to, Nos. 1, 2, 4(light and heavy), 5(light and heavy) and 6 fuel oils, diesel and kerosene of any grade or type used to heat residential, industrial, or commercial premises.

"Holiday" means a flaw in the integrity of the metal or a flaw in the corrosion resistant coating of the metallic parts of an underground storage tank system which may cause the metal to corrode.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators and other similar devices.

"Installation" means the emplacement of a new underground storage tank or underground storage tank system including the replacement of an existing underground storage tank or underground storage tank system.

"Inventory controls" means the techniques used to identify a loss of product that are based on volumetric measurements in the underground storage tank and reconciliation of these measurements with hazardous substance delivery and withdrawal records.

"Leak" means the release of a hazardous substance from an underground storage tank system into a space created by a method of secondary containment wherein hazardous substances can be detected by visual inspection or a monitoring system before it enters the environment.

"Leak detection system" means a method of detecting a leak in the space created by a method of secondary containment.

"Legal entity" means all public and private entities including all political subdivisions of the State such as counties and municipalities as well as utility authorities.

"Lining" means a layer of non-corrodible material resistant to the hazardous substance stored and bonded firmly to the interior surface of the tank, pipe, line, fixture or other equipment.

"Liquid" means any material which has a fluidity greater than that of 300 penetration asphalt when tested in accordance with the ASTM D-5-78 Test for Penetration for Bituminous Materials. If not specified, liquid shall mean both combustible and noncombustible liquids.

"Liquid level indicator" means a monitoring system which detects a change in the height of a fixed volume of liquid in an annular space.

"Liquid sensor" means a monitoring system which detects the liquid phase of a hazardous substance.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants) for the purpose of collecting oil, water and other liquids for subsequent disposition or reinjection into a production or pipeline stream, or which may collect and separate liquids from a gas stream.

"Membrane liner" means a synthetic non-corrodible impervious material used as a barrier around the tank system to facilitate monitoring releases.

"Modify" or "modification" means a revision, update, adjustment, correction or change in any information included in a facility's registration material.

"Monitor well" means a well used to observe the elevation of the water table or potentiometric surface, or to determine water quality in an aquifer.

"Monitoring system" means either a discharge detection system or leak detection system capable of detecting leaks or discharges, or both, other than an inventory control system,

used in conjunction with an underground storage tank, or a facility conforming to criteria established in N.J.A.C. 7:14B-6.

"Motor fuel" means any petroleum product that includes, but is not limited to, all grades of gasoline, diesel fuel and kerosene used in the operation of any type of engine.

"New underground storage tank system" means an underground storage tank system which is not an existing or closed underground storage tank system.

"Nonoperational storage tank" means any underground storage tank in which hazardous substances are not contained or from which hazardous substance are not dispensed.

"Non-public water supply" means a water system that is not a public water system.

"Numbers 4, 5 and 6 fuel oil" means grades of fuel oil used for power generation or heating with properties listed within ASTM Specifications D-396 and 975.

"Operational storage tank" means any underground storage tank in which hazardous substances are contained or from which hazardous substances are dispensed.

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility.

"Owner" means any person who owns a facility, or in the case of a nonoperational storage tank, the person who owned the nonoperational storage tank immediately prior to the discontinuation of its use.

"Permit" means an authorization or license or equivalent control document issued by the Department or its designee to implement the requirements of N.J.A.C. 7:14B-10.

"Person" means any individual, partnership, company, corporation, consortium, joint venture, commercial or any other legal entity, the State of New Jersey, or the United States Government.

"Petroleum" or "petroleum products" means all hydrocarbons which are liquid at one atmosphere pressure (760 millimeters or 29.92 inches Hg) and temperatures between -20° F and 120° F (-29° C and 49° C), and all hydrocarbons which are discharged in a liquid state at or nearly at atmospheric pressure at temperatures in excess of 120° F (49° C) including, but not limited to, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oil, and purified hydrocarbons that have been refined, re-refined, or otherwise processed for the purpose of being burned as a fuel to produce heat or useable energy or which is suitable for use as a

motor fuel or lubricant in the operation or maintenance of an engine.

"Piping" or "pipe" means any hollow cylinder or tubular conveyance which routinely contains a hazardous substance, is in contact with the ground and is constructed of non-earthen materials including any valves, elbows, joints, flanges and flexible connections and is designed to transport hazardous substances. Piping does not include vent lines, vapor recovery lines or fittings located on top of the tank.

"Piping containment chambers" means a container attached to the top of the underground storage tank accessible to grade providing containment of product bearing appurtenant pipe fittings.

"Potential receptor" means any structure or area that may become contaminated from or affected by a leak or spill from an underground storage tank which then may endanger the environment or public health, safety or welfare of any citizen.

"Pressure loss sensor" means a monitoring system which can detect a loss of pressure in a pressurized annular space.

"Primary container" means the first level of containment which comes into immediate contact on its inner surface with the hazardous substance being contained (for example, single-walled tank).

"Product tight" means impervious to the hazardous substance contained or to be contained so as to prevent a release.

"Public community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Public non-community water system" means a public water system that is not a community water system.

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.

"Qualified Ground Water Consultant" means any person who holds one or more of the following:

1. A certification used by one of the following organizations:

- i. American Institute of Hydrology - professional hydrologist, professional hydrogeologist, or professional hydrologist (ground-water);

ii. American Institute of Professional Geologist - certified professional geologist or certified professional geological scientist;

iii. American Society of Agronomy, American Registry of Certified Professionals in Agronomy, Crops and Soils - certified professional soil scientist or certified professional soil specialist;

iv. National Water Well Association, Association of Ground Water Scientists and Engineers - certified ground water professional;

v. American Association of Petroleum Geologists, Division of Professional Affairs - certified petroleum geologists;

vi. Society of Independent Professional Earth Scientists - member; or

vii. Association of Engineering Geologists - member;

2. A New Jersey Professional Engineer License; or

3. Any other license, certification, or registration to practice geology, hydrogeology or ground water hydrology issued by any state in the United States or by any national organization, provided that the license, certification or registration process requires, at a minimum, the following:

i. Possession of a bachelor's degree from an accredited college;

ii. Five years of professional experience in geology, hydrogeology or ground water hydrology;

iii. Three qualified references;

iv. Review by a board for acceptance; and

v. Adherence to a code of ethics.

"Registration Certificate" means a control document issued by the Department to implement the registration requirements of this Chapter.

"Release" means a leak or discharge.

"Removal" or "removed" means an underground storage tank(s) that has been taken out of the ground and been disposed of in accordance with applicable local, State and Federal laws.

"Residential building" means a single or multi-family dwelling, nursing home, trailer, condominium, boarding house,

apartment house, or other structure designed and used primarily as a dwelling.

"Saturated zone" or "zone of saturation" means that part of the subsurface under greater than atmospheric pressure in which all voids are filled with water.

"Screen" means a pipe used to support the sides of a hole which allows the entrance of water, vapor or other fluid into the hole.

"Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank system may be detected before it enters the environment.

"Site" means the contiguous piece of property at which a facility is located.

"Stage" means to place in a temporary holding area prior to final disposal.

"Standard Reporting Form" or "SRF" means the official form of the Department used to report a change in the status of a registered underground storage tank.

"State Act" means P.L. 1986, c. 102 (codified at N.J.S.A. 58:10A-21 et seq.) and any amendments thereto.

"Substantial modification" means any construction at, or restoration, refurbishment or renovation of, an existing facility which increases or decreases the in-place storage capacity of the facility or alters the physical configuration or impairs or affects the physical integrity of the facility or its monitoring systems.

"Sump" means any pit or reservoir that meets the definition of an underground storage tank (including pipes, troughs or trenches connected to it) that serves to collect or contain a leak or discharge of a hazardous substance for no more than 48 hours.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of hazardous substances and that is not an injection well.

"Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed of non-earthen materials (for example, concrete, steel, plastic) that provide structural support.

"Tank capacity" means the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks storing the same hazardous substance at the same site, the aggregate of the nominal tank sizes will be used to determine capacity.

"Test" means the testing of underground storage tanks in accordance with standards adopted by the Department.

"Transfer of ownership" means a change in the ownership of a facility.

"Underground storage tank" means any one or combination of tanks, as set forth in N.J.A.C. 7:14B-1.4, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more beneath the surface of the ground.

"Underground storage tank program" means the regulatory requirements and activities conducted pursuant to the authority of N.J.S.A. 58:10A-21 et seq.

"Underground storage tank system" or "tank system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

"Unsaturated zone" means the subsurface zone containing water under a hydrostatic pressure less than atmospheric, including water held by capillary forces within the soil containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation.

"Use" means the filling, dispensing or storing of any hazardous substance from or in an underground storage tank system.

"U-tube" means a slotted pipe located lengthwise and underneath each tank, sloped to a collection sump and accessible at grade.

"Vacuum loss sensor" means a monitoring system which detects the loss of vacuum from an annular space and thereby indicates a breach in either the primary or secondary container.

"Vadose zone" means the zone containing water under hydrostatic pressure less than atmospheric pressure and which is bounded by the ground surface and the water table.

"Vapor sensor" means a monitoring system which can detect the gaseous phase of a hazardous substance.

"Volatile organic substance" means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, dilutents, and thinners which have vapor pressures or sums of partial pressures of substances of 0.02 pounds per square inch (one millimeter of mercury) absolute or greater measured at standard conditions of atmospheric pressure and a temperature of 60 degrees Fahrenheit; and, in the case of surface coating formulations, includes any coalasking or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, dichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2, trifluoroethane, 1,2, dichloro-1,1,2,2 tetrafluoroethane and chloropentafluoroethane.

"Wastewater treatment tank" means a tank that is part of a wastewater treatment facility regulated under either Section 402 or 307(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and receives and treats or stores an influent wastewater which contains a hazardous substance, or is regulated as a treatment works pursuant to N.J.A.C. 7:14A-1 et seq.

"Water table" means the surface of the body of unconfined ground water where the hydrostatic pressure is equal to atmospheric pressure. The water table is the boundary between the saturated and unsaturated zones and fluctuates according to season and rainfall.

SUBCHAPTER 2. REGISTRATION REQUIREMENT AND PROCEDURES

7:14B-2.1 General registration requirements

(a) Any person that owns or operates an underground storage tank system shall register each tank system with the Department.

(b) Any person that owns or operates an underground storage tank system who notified the Department pursuant to Section 9002 of the "Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act", 42 U.S.C. 6901 et seq., shall comply with all requirements set forth in this chapter.

(c) Any person that owns or operates an underground storage tank system shall only use such tank upon receipt of a valid Registration Certificate issued by the Department.

(d) Any person that owns or operates an underground storage tank system that began use of the tank on or before December 21, 1987 shall register the tank system with the Department no later than 60 days following this date. Any person that owns or operates an underground storage tank system that was installed after December 21, 1987 shall register the tank system with the Department 30 days prior to the use of that tank system.

(e) Any person that owned or operated an underground storage tank system which was removed from the ground on or after September 3, 1986 shall register that tank system for the period between September 3, 1986 and the date that the tank system was removed.

(f) any owner or operator intending to close an underground storage tank system, shall register the underground storage tank system with the Department before these closure activities are begun.

7:14B-2.2 Registration and certification procedures

(a) Any person that owns or operates a facility shall file registration and certification information on the New Jersey Underground Storage Tank Registration Questionnaire and the New Jersey Underground Storage Tank Annual Certification Form, respectively.

(b) All registration and certification forms shall be obtained from and accurately completed, signed, dated and returned to:

Bureau of Underground Storage Tanks
Registration Unit
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

(c) The owner or operator of a facility shall complete the New Jersey Underground Storage Tank Annual Certification Form prior to the annual anniversary date of the facility's registration. The Department may issue the annual Registration Certificate to the registrant following submission of the complete Annual Certification Form.

(d) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Registration Questionnaire:

1. The name, location, and contact person for the facility;
2. The name and address of the facility owner;
3. The number and type of underground storage tank systems at the facility, including, but not limited to, contents, size, age, type of construction and other characteristics of the tank system;
4. A site plan of the facility, including the location of the tanks, lines, pumps, dispensers, fill pipes, and other features of the tank system, including the distance from existing building and property boundaries.
5. Provide the following information for all general liability insurance or other financial responsibility mechanisms:
 - i. Type of mechanism;
 - ii. Carrier or issuing institution;
 - iii. Date of coverage;
 - iv. Policy number (if applicable); and
 - v. Policy amount (if applicable).

(e) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Annual Certification Form:

1. Certification that the facility is in compliance with this chapter;
2. Notification of any changes to the status of the facility.
3. Provide the following information for all general liability insurance or other financial responsibility mechanisms:
 - i. Type of mechanism;

- ii. Carrier of issuing institution;
- iii. Date of coverage;
- iv. Policy number (if applicable); and
- v. Policy amount (if applicable).

(f) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Standard Reporting Form:

1. Identify whether the underground storage tank located at owner or operator's facility is being installed, abandoned, removed, sold or transferred, or substantially modified;

2. The name and address of the owner or operator;

3. The facility name and location;

4. The identification number of the affected tanks as it appears on the Registration Questionnaire;

5. The underground storage tank registration number (if known);

6. Specific information concerning transfer of ownership, abandonment or removal, substantial modifications and new or replacement installations, depending on which activity is applicable;

7. Certification that the facility is in compliance with this chapter;

8. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

- i. Type of mechanisms;
- ii. Carrier or issuing institution;
- iii. Date of coverage;
- iv. Policy number (if applicable); and
- v. Policy amount (if applicable).

7:14B-2.3 Signatories

(a) All registrants shall, upon submission, sign the following certification on the forms identified in (b) below:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 above shall be signed by the highest ranking individual at the facility with overall responsibility for that facility.

(b) The certification set forth in (a) above shall be signed on the following forms:

i. The New Jersey Underground Storage Tank Registration Questionnaire;

ii. The New Jersey Underground Storage Tank Standard Reporting Form.

(c) All owners or operators shall, upon submission, sign the following certification for the activities set forth in (d) below:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (c)1 above shall be signed by the highest ranking individual with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this submittal and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fines and/or imprisonment."

i. The certification required by (c)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership, or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency by either the principal executive officer or ranking elected official.

(4) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (c)1i above is the same person as the official required to certify in (c)2i, only the certification in (c)1i need be made. In all other cases, the certifications of (c)1 and 2 shall be completed.

(d) The certifications set forth in (c) above shall be completed on the following submittals:

1. The Annual Certification Form required in N.J.A.C. 7:14B-2.2(e);

2. The discharge of hazardous substances report required in N.J.A.C. 7:14B-8.3(a)6;

3. A request for an exemption to site assessment requirements as set forth in N.J.A.C. 7:14B-9.4(c);

4. The closure report required by N.J.A.C. 7:14B-9.5(a)5; and

5. A permit application as required in N.J.A.C. 7:14B-10.1(f)8.

7:14B-2.4 Transfer of registration

(a) A Registration Certificate issued by the Department is not transferable.

(b) The owner or operator of an underground storage tank system shall notify the Department of any change in the ownership of a facility within 30 days after the contract date or the date of closing on the Standard Reporting Form obtainable from the Department at the address provided in N.J.A.C. 7:14B-2.2(b) and in accordance with the procedures for reporting modifications set forth in N.J.A.C. 7:14B-2.5.

(c) The Department may issue to the new owner or operator a new Registration Certificate indicating all changes that appear on the Standard Reporting Form.

7:14B-2.5 Changes to registration

(a) The owner or operator of a facility shall amend a facility's registration to reflect any modification of any information included in the New Jersey Underground Storage Tank

Registration Questionnaire or New Jersey Underground Storage Tank Annual Certification Form. Each modification shall be reported to the Department on a separate Standard Reporting Form within 30 days after completion of the modification except as provided for in (c) below.

(b) Modifications include, but are not limited to, the following:

1. The sale or transfer of ownership of a facility;
2. The substantial modification of a facility;
3. A change in the type of hazardous substances stored at a facility.

(c) The owner or operator intending to close an underground storage tank system shall submit a Standard Reporting Form in advance of the closure as required by N.J.A.C. 7:14B-9.1 through 9.5.

7:14B-2.6 Public access to registration information

(a) All completed New Jersey Underground Storage Tank Registration Questionnaires and New Jersey Underground Storage Tank Annual Certification Forms, as well as documented information pertaining to the registration, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.

(b) Interested persons shall request in writing an appointment to review the public records.

7:14B-2.7 Display of Registration Certificate

The owner or operator of an underground storage tank system shall prominently display a valid Registration Certificate at the facility or shall make the Registration Certificate available for inspection by any authorized local, State or Federal representative.

7:14B-2.8 Denial or revocation of registration

(a) The Department may, in its discretion, deny the issuance of a Registration Certificate upon a determination of the following:

1. The New Jersey Underground Storage Tank Registration Questionnaire is incomplete, contains inaccurate information and/or is illegible;
2. The owner or operator fails to enclose the accurate Initial Registration Fee with the New Jersey Underground Storage Tank Registration Questionnaire pursuant to N.J.A.C. 7:14B-3.1; or

3. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke the registration of a facility upon a determination of the following:

1. The New Jersey Underground Storage Tank Registration Questionnaire contains false or inaccurate information;

2. The owner or operator has failed to submit an Annual Certification Form pursuant to N.J.A.C. 7:14B-2.2;

3. The owner or operator has failed to pay the Annual Certification fee pursuant to N.J.A.C. 7:14B-3.1;

4. An authorized representative is denied access to the facility during any reasonable hour; or

5. The owner or operator has failed to comply with any requirement of the State Act or this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of registration by Notice of Intent to Deny Registration or Notice of Intent to Revoke Registration. This Notice shall include:

1. The specific grounds for denial of issuance as set forth in N.J.A.C. 7:14B-2.8(a) above.

2. The specific grounds for revocation as set forth in N.J.A.C. 7:14B-2.8(b) above; or

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a registration shall not use the tank as required by N.J.A.C. 7:14B-2.1(c).

(f) Any person whose registration has been denied or revoked may request a hearing pursuant to N.J.A.C. 7:14B-12.2(a).

SUBCHAPTER 3. FEES

7:14B-3.1 Initial Registration Fee

(a) The owner or operator of an underground storage tank system shall submit a \$100.00 Initial Registration fee for each facility upon registration of the facility with the Department.

7:14B-3.2 Annual Certification Fee

(a) The owner or operator of an underground storage tank system shall submit an Annual Certification Fee for each facility upon the yearly re-registration of the facility with the Department

(b) The Annual Certification Fee is as follows:

1. \$100.00 per facility up to the first five underground storage tanks located on a contiguous piece of property; and
2. \$15.00 per tank for each additional underground storage tank located on a contiguous piece of property.

7:14B-3.3 Fee payment

(a) Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey and submitted to:

Bureau of Underground Storage Tanks/Billing Unit
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:14B-3.4 Exemption from fees

(a) The Department shall not assess a fee to public schools or religious or charitable institutions.

1. For the purpose of this exemption, "public school" means a school, under college grade, which derives its support entirely or in part from public funds and is listed as a public school in the current edition of the New Jersey Department of Education's "School Directory."

(b) The Department shall not assess a fee for underground storage tank systems which have been abandoned in place in accordance with N.J.A.C. 7:14B-9.1(d).

7:14B-3.5 Permit and approval fees

(a) The owner or operator of an existing or proposed underground storage tank system shall obtain a permit or

approval from the Department before beginning any of the activities listed below. The owner or operator shall submit a fee for each activity at a facility which requires a permit or approval.

(b) The owner or operator shall submit a separate fee for each excavation area where an activity occurs.

(c) The fee schedule is as follows:

1. \$50.00 for application review and permit or approval issuance for each activity;

2. \$25.00 to receive a permit for the installation of spill and/or overfill protection devices;

3. \$300.00 to receive a permit for the installation of a discharge monitoring system;

4. \$100.00 to receive a permit for the installation of a field installed cathodic protection system on a new or existing tank system;

5. \$100.00 to receive a permit for the substantial modification of an underground storage tank system which is not included in 2, 3 or 4 above;

6. \$120.00 to receive an approval for the closure of an underground storage tank system requiring a site assessment; and

7. \$80.00 to receive an approval for the closure of an underground storage tank system which does not require a site assessment.

SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEM PERFORMANCE STANDARDS AND ENGINEERING REQUIREMENTS

7:14B-4.1 Performance standards for new underground storage tank systems

(a) All new underground storage tank systems shall be properly designed, constructed and protected from corrosion in accordance with (g), (h), (i), (j) or (k) below and with N.J.A.C. 7:14B-4.2(d).

(b) All compartmentalized tanks shall hold, in each compartment, hazardous substances compatible with one another to prevent safety hazards such as fire or explosion or corrosion of the underground storage tank system in case of breaches in the compartment walls.

(c) All new underground storage tank systems shall be equipped with spill and overfill prevention devices as follows:

1. A spill catchment basin of at least five gallons capacity designed to prevent the release of product to the environment when the transfer hose is detached from the fill pipe except that:

i. The owner or operator of the underground storage tank system with a remote fill port shall provide a spill catchment basin of at least 15 gallons capacity;

ii. The owner or operator of the underground storage tank system is not required to install spill prevention if the fill pipe is contained within the product-tight piping chamber;

2. Overfill protection which satisfies one of the following:

i. A sensor for measuring the level of product in the tank, equipped with an audible or visual alarm (mounted in proximity to the point of delivery so that the alarm can be easily heard or seen) that is triggered when the tank is 90 percent full;

ii. A device designed to restrict the flow of product into the tank and which will alert the transfer operator when the tank is 90 percent full; or

iii. A device designed to automatically stop the flow of product into the tank when the tank is 95 percent full.

3. The owner or operator of the underground storage tank system is not required to install the overfill protection required by (c)2 above if the tank system is filled by transfers of no more than 25 gallons at one time.

(d) The following categories of new underground storage tanks shall be equipped with both primary and secondary levels of containment:

1. All new tanks containing hazardous substances other than petroleum products and waste oil, except that the Department may, in its discretion, waive this requirement where the owner or operator provides the following:

i. An alternate method which can detect a release of the stored substance as effectively as any of the methods allowed in the monitoring sections of N.J.A.C. 7:14B-6.2(a), (b) and (c) can detect a release of petroleum; and

ii. Information on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the underground storage tank site;

2. All new tanks located within any one of the following distances:

i. For underground storage tanks containing gasoline, within 2000 feet of a public community water system well.

ii. For underground storage tanks containing petroleum products other than gasoline, within 750 feet of a public community water system well;

iii. Within 300 feet of a public non-community water system well; or

vi. Within 300 feet of a surface water body; and

3. All new tanks that cannot comply with the requirements of N.J.A.C. 7:14B-6.3(b)2 for discharge monitoring systems.

(e) All new underground storage tanks shall be equipped with striker plates.

(f) All new underground storage tanks shall be equipped with product tight piping containment chambers accessible to grade containing all piping connections of product bearing piping excluding the fill pipe where a spill catchment basin is used.

(g) All new underground storage tanks constructed of fiberglass reinforced plastic shall conform to the standards set forth by one of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products";

2. Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or

3. American Society of Testing and Materials Standards D4021-86.

(h) All new underground storage tanks constructed of dielectrically coated steel and cathodically protected with factory installed sacrificial anodes shall conform to the standards set forth by one of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. Steel Tank Institute, STI-P3-87, "Specification for STI-P3 System for External Corrosion Protection of Underground Storage Tanks";

2. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; or

3. Underwriters Laboratories of Canada: CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;" or

4. National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," or American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and UL standard 58, "Steel Underground Storage Tanks for Flammable and Combustible Liquids."

(i) All new underground storage tanks constructed of dielectrically coated steel and cathodically protected with a field installed cathodic protection system shall have a corrosion expert design the cathodic protection system and shall conform to the standards set forth by the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," or American Petroleum Institute Publication 1632, "Cathodic

Protection of Underground Petroleum Storage Tanks and Piping Systems;

2. Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; or

3. UL standard 58, "Steel Underground Storage Tanks for Flammable and Combustible Liquids."

(j) All new underground storage tanks constructed of a steel-fiberglass-reinforced-plastic composite shall conform to the standard set forth by the following national trade association or independent testing laboratories, incorporated herein by reference:

1. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks;"

2. Association for Composite Tanks ACT-100, "Specification for Fabrication of FRP clad Underground Storage Tanks," or

3. Steel Tank Institute F894-89, "Specification for External Corrosion Protection of Underground Storage Tanks Using Monolithic Coatings."

(k) An owner or operator may install a new underground storage tank constructed of materials other than those listed in (g) through (j) above if the material is approved by one of the organizations listed in (g) through (j) above.

(l) All new underground storage tanks systems with cathodic protection systems shall be equipped with a measuring station accessible to grade to allow for the testing of the cathodic protection systems.

(m) The owner or the operator of an underground storage tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed from that system will not interact in a way that may undermine the integrity of the system or promote its corrosion.

7:14B-4.2 Performance standards for new underground storage tank appurtenant piping

(a) All new underground storage tank appurtenant piping conveying hazardous substances other than petroleum products and waste oil or conveying hazardous substances in areas described in N.J.A.C. 7:14B-4.1(d) shall be constructed in accordance with one of the following methods:

1. Double walled with a leak detection monitoring system installed in accordance with N.J.A.C. 7:14B-6.3(a)2;

2. Placed within a lined trench which terminates at the bottom of the dispenser and the top of the tank, installed in accordance with N.J.A.C. 7:14B-4.4(d)2 through 6, and equipped with a leak detection monitoring system in accordance with N.J.A.C. 7:14B-6.3(a)2;

3. Suction line piping equipped and installed in accordance with N.J.A.C. 7:14B-6.3(a)1;

4. Single walled or secondarily contained piping with a pressurized shut-down monitoring device installed in accordance with N.J.A.C. 7:14B-6.1(k)1; or

5. Secondarily contained utilizing a semirigid, dielectric, noncorrosive material. This material shall be compatible with the hazardous substance stored. It shall be at least 175 mils thick and provide an interstitial space to be tested at a pressure recommended by the manufacturer.

(b) All new underground storage tank appurtenant piping material shall be compatible with the hazardous substance being stored and dispensed from the underground storage tank.

(c) All new underground storage tank appurtenant piping constructed of fiberglass reinforced plastic shall conform to the standards set forth by one of the following national trade associations or independent laboratories, incorporated herein by reference:

1. Underwriters Laboratories:

i. Standard 971, "UL Listed Non-Metal Pipe"; or

ii. Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; or

2. Underwriters Laboratories of Canada:

i. Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; or

ii. Standard CAN4-S633-M81, "Flexible Underground Hose Connectors."

(d) All new underground storage tank appurtenant piping constructed of dielectrically coated steel and equipped with a field installed cathodic protection system shall have a corrosion expert design the cathodic protection system and shall conform to the standard set forth by at least one or more of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

2. American Petroleum Institute:

i. Publication 1615, "Installation of Underground Petroleum Storage Systems"; and

ii. Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

3. National Association of Corrosion Engineers
Standard RP-01-69, "Control of External Corrosion of Submerged Metallic Piping Systems;" or

4. Steel Tank Institute R892-89, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

(e) The owner or operator of all new underground storage tank appurtenant piping constructed of materials other than those listed in (c) and (d) above must receive approval from one of the organizations listed in (c) and (d) above. This information must be submitted to the Bureau of Underground Storage Tanks.

(f) The Department may, in its discretion, approve a new underground storage tank piping system not specified in this section upon the submittal to the Bureau of Underground Storage Tanks by the owner or operator of data from one of the following organizations that proves that the new underground storage tank piping system will prevent discharges as effectively as the systems listed in (a) above:

1. American Petroleum Institute;

2. Petroleum Equipment Institute;

3. Underwriter's Laboratories; or

4. American Society for Testing and Materials.

7:14B-4.3 Installation requirements for new underground storage tanks and appurtenant piping

(a) All new underground storage tanks and appurtenant piping shall be installed in conformance with the manufacturer's instructions and with the current practices of one of the following national trade associations, incorporated herein by reference:

1. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

2. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

3. American National Standards Institute:

- i. Standard B31.3, "Petroleum Refinery Piping"; and
- ii. Standard B31.4, "Liquid Petroleum."

(b) The underground storage tank system excavation shall provide adequate space for the tank, appurtenant piping and associated equipment, and for the proper placement and compaction of backfill materials.

(c) The underground storage tank system backfill material shall be a clean, washed, non-corrosive material such as sand, crushed rock or pea gravel, selected in conformance with the manufacturer's instructions, and placed and compacted, if necessary, in uniform lifts for proper support and protection of the tank and piping after installation.

(d) The underground storage tank shall be pressure/soap tested immediately prior to installation with three to five pounds per square inch air pressure and appurtenant piping shall be pressure/soap tested with 50 pounds per square inch pressure, soaping all surfaces, seams, and fittings while inspecting for bubbles. Pressure shall be monitored by the underground storage tank installer for a period of one hour. Additional tests or testing variations on piping may be required in accordance with manufacturer's instructions.

(e) The underground storage tank shall be tested for vertical deflection by measuring the tank diameter once before and once after backfill is placed in the excavation around the tank. The owner or operator shall, when vertical deflection varies by more than two percent between the two measurements, or by a smaller variation specified in the underground storage tank manufacturer's installation instructions and checklist, notify the underground storage tank manufacturer.

(f) An underground storage tank installed in areas subject to a high water table or flooding shall be anchored in accordance with manufacturer's instructions.

(g) The underground storage tank appurtenant piping shall be designed to minimize crossed underground storage tank piping and/or interference with conduit and other tank system components. Where the crossing of piping is unavoidable, adequate clearance shall be provided to prevent contact.

(h) The underground storage tank piping joints shall be accurately cut and deburred to provide liquid-tight seals.

(i) Flexible connectors shall be installed where pipes join dispenser and underground storage tank fittings.

(j) Underground storage tank precision tests and appurtenant piping precision tests shall be performed as follows after backfill material is installed but before the underground storage tank system area is restored to grade:

1. Precision tank system testing shall, except where specified below, conform to the requirements of the current edition of the National Fire Protection Association Bulletin #329, "Underground Leakage of Flammable and Combustible Liquids," incorporated herein by reference;

2. Precision tank system testing shall be performed by qualified technical personnel certified by the manufacturer of the test method and in the interpretation of the data produced;

3. Precision tank system testing shall be capable of detecting a 0.1 gallon per hour leak rate with a 95 percent probability of detection and a five percent probability of false positive and/or results from any part of the underground storage tank system;

4. Precision tank system testing shall, at a minimum, take into account the following factors:

i. Changes in the temperature of the liquid during testing;

ii. The coefficient of expansion of the liquid;

iii. Tank end deflection or movement;

iv. The presence of a water table in the tank excavation area during testing and the hydrostatic effects of the water table;

v. Vapor pockets;

vi. Evaporation of the liquid during testing; and

vii. Precision test operator error; and

5. Testing of the product-bearing piping shall detect a 0.1 gallon per hour leak conducted at one and one half times the operating pressure or equivalent.

(k) The Department may, in its discretion, approve an underground storage tank or piping installation procedure not specified in this section, provided that the procedure is approved by one of the organizations listed in (a) above or by the tank manufacturer.

7:14B-4.4 Construction requirements for secondary containment

(a) The Department-approved methods of secondary containment for underground storage tanks include the following:

1. A double-walled tank with its secondary container completely surrounding the primary container (360 degrees) and constructed of materials as set forth in N.J.A.C. 7:14B-4.1;
2. A single-walled tank within a lined excavation and constructed of materials as set forth in N.J.A.C. 7:14B-4.1; or
3. A tank system conforming to Underwriters Laboratories specification 73-S-3, incorporated herein by reference, consisting of a steel tank totally encased in a semi-rigid, dielectric, noncorrosive material.

(b) All secondary containment systems shall be equipped with a collection system to contain, store and allow for the removal of a leak of hazardous substance from any part of an underground storage tank system.

(c) The requirements in (a)1 above for secondary containment systems consisting of double-walled tanks shall be as follows:

1. Double-walled tanks shall provide for the monitoring of the annular space; and
2. Double-walled tanks shall be designed and installed to provide for the drainage of any hazardous substance and/or water from the primary container to a specific location in the annular space.

(d) The requirements in (a)2 above for secondary containment systems consisting of single-walled tanks within a lined excavation shall be as follows:

1. The membrane liner system shall have the capacity to contain 100 percent of the capacity of the largest tank within its boundary;
2. The membrane liner shall surround the tank system completely so as to prevent vertical and lateral migration of the stored hazardous substance;
3. The membrane liner system shall be designed to prevent the intrusion of precipitation, ground water or soil moisture which interferes with the ability of the monitoring system to detect a release. The lined excavation shall be capped with an impermeable material which extends no less than one foot beyond the edges of the lined excavation to prevent infiltration from the surface;
4. The membrane liner shall always be above the ground water level and the underground storage tank system shall not be

in the twenty-five year flood plain unless the liner and monitoring systems are intended for use under such conditions;

5. The membrane liner shall consist of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the hazardous substance stored) to direct a release to a monitoring point or points and permit its detection;

6. The membrane liner shall be compatible with the hazardous substance stored so that a release from the underground storage tank system will not cause a deterioration of the liner allowing a release to pass through undetected; and

7. For cathodically protected tanks, the membrane liner shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

7:14B-4.5 Upgrading existing underground storage tank systems

(a) All existing underground storage tank systems containing hazardous substances other than petroleum products and waste oil shall, by December 22, 1998, be equipped with both primary and secondary levels of containment except as provided for under N.J.A.C. 7:14B-4.1(d)1 and 4.2(a).

(b) All existing underground storage tank systems used primarily for agricultural purposes on land that qualifies for a special tax assessment under N.J.S.A. 54:4-23.1 et seq. and installed prior to September 3, 1986 shall, by December 22, 1993, install a monitoring system in accordance with N.J.A.C. 7:14B-6, except as provided for in (g) below, install corrosion protection in accordance with N.J.A.C. 7:14B-4.1 and install spill and overfill protection in accordance with N.J.A.C. 7:14B-4.1

(c) All existing metallic underground storage tank systems without corrosion protection shall retrofit cathodic protection by September 3, 1991 in accordance with the following conditions:

1. Installation, operation and design of cathodic protection systems shall be performed in accordance with one of the codes and standards stated in N.J.A.C. 7:14B-4.1(i)1, (j) or (k) and one of the codes and standards stated in N.J.A.C. 7:14B-4.2(d), incorporated herein by reference;

2. The tank and/or piping is constructed of steel and cathodically protected using a field-installed cathodic protection system that is:

i. Designed by a corrosion expert; and

ii. Designed to allow for the inspections required in N.J.A.C. 7:14B-5.2;

3. The tank is internally inspected or otherwise assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system, or the tank has been installed for less than 10 years and there is no evidence of failure of the tank system's structural integrity. In any case, the underground storage tank system must be equipped with a Department-approved monitoring system.

4. Tanks which have corrosion holes may be relined in accordance with N.J.A.C. 7:14B-5.3 to allow for the retrofitting of cathodic protection; and

5. A station accessible to grade shall be made available for testing of the cathodic protection system.

(d) All existing underground storage tank systems shall, except as provided for in (g) below, install a monitoring system in accordance with N.J.A.C. 7:14B-6, and spill prevention and overfill protection in accordance with N.J.A.C. 7:14B-4.1(c), by September 3, 1991.

(e) The owner or operator of an underground storage tank system that is equipped with a monitoring system installed prior to September 4, 1990 shall maintain on site a certification from a Ground Water Consultant that the site conditions and locations of the monitoring devices comply with N.J.A.C. 7:14B-6.4 and documentation from the manufacturer or certification from a New Jersey Professional Engineer that the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized.

(f) The owner or operator of an underground storage tank system that contains hazardous substances other than petroleum products and waste oil and that is equipped with a secondary containment system installed prior to September 4, 1990 shall certify on the Annual Certification Form required in N.J.A.C. 7:14B-2.2(e) that the secondary containment system complies with N.J.A.C. 7:14B-4.4.

(g) All existing underground storage tanks that are equipped with a monitoring system in accordance with a valid New Jersey Pollutant Discharge Elimination System/Discharge to Ground Water permit (see N.J.A.C. 7:14A-6) and in compliance with this permit shall be exempt from the monitoring system upgrade requirements of (b), (d) and (e) above. Compliance may be determined by review of the issued permit, discharge monitoring reports and other required submittals.

(h) By March 3, 1991 the owner or operator shall permanently mark all fill ports to identify product inside the underground storage tank system. The markings shall be consistent with the colors and symbol codes established by the American Petroleum Institute Bulletin #1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product

Identification at Service Station and Distribution Terminals," incorporated herein by reference.

(i) By December 22, 1990, the owner or operator of an underground storage tank system using pressurized piping which is not in conformance with the requirements of N.J.A.C. 7:14B-6.4(e) shall:

1. Install a line release detector which detects releases at a minimum of three gallons per hour at 10 pounds per square inch pressure within one hour and restricts flow to the dispenser in the event of a release and conduct an annual precision test on the piping in accordance with N.J.A.C. 7:14B-4.3(j); or

2. Install a pressurized shut-down monitoring device in accordance with N.J.A.C. 7:14B-6.1(k)1.

SUBCHAPTER 5. UNDERGROUND STORAGE TANK SYSTEM GENERAL OPERATING REQUIREMENTS

7:14B-5.1 Spill and overfill control

(a) The owner and the operator of an underground storage tank system shall ensure the following:

1. There shall be no release of hazardous substance due to spills or overfills at an underground storage tank facility;

2. The available volume in an underground storage tank shall always be greater than the volume of hazardous substance being transferred to the tank; and

3. The owner, the operator or the person who delivers the hazardous substance is always physically present to observe the transfer of a hazardous substance into the underground storage tank.

7:14B-5.2 Operation and maintenance of cathodic protection systems

(a) The owner and operator of an underground storage tank system with cathodic protection systems shall comply with the following requirements:

1. All cathodic protection systems shall be operated and maintained in a manner which provides continuous corrosion protection to the metal components of the underground storage tank system;

2. All underground storage tank systems equipped with cathodic protection systems shall be inspected in accordance with the following schedule:

i. Within six months after installation or repair and at least every three years thereafter, a cathodic protection tester shall test all cathodic protection systems to see if they are being operated properly and are operating properly;

ii. All underground storage tank systems equipped with impressed current cathodic protection systems shall be inspected every 60 days by the owner or operator or the owner or operator's agent, provided that the individual performing the inspection has been trained by a cathodic protection tester. An employee of the owner or operator may also perform the inspection if the employee has been trained by the owner or operator who was trained by a cathodic protection tester. The inspector shall visually verify that current is being supplied to the impressed current system to allow it to function properly.

3. The inspection conducted pursuant to (a)2i and ii above shall test the cathodic protection system of each underground storage tank system in accordance with the National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion in Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" or American Petroleum Institute's Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", incorporated herein by reference;

4. All owners or operators of underground storage tank systems shall maintain records that detail the following:

i. The results of the two most recent tests required under (a)2i above; and

ii. The results of the three most recent inspections required under (a)2ii above; and

5. The owner and the operator of an underground storage tank system shall certify compliance with the requirements of N.J.A.C. 7:14B-5.1 and 5.2 on the New Jersey Underground Storage Tank Annual Certification Form.

7:14B-5.3 Repairs

(a) The owner or operator of an underground storage tank system shall obtain a permit from the Department, pursuant to N.J.A.C. 7:14B-10(a), prior to performing repairs which constitute a substantial modification under N.J.A.C. 7:14B-10.

(b) The underground storage tank system shall be repaired in accordance with the standards set forth by one of the following national associations, incorporated herein by reference:

1. American Petroleum Institute Publication #1631, "Recommended Practice for the Interior Lining of Existing Underground Storage Tanks";

2. American Petroleum Institute Publication #2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipeline"; or

3. National Fire Prevention Association Standard 30, "Flammable and Combustible Liquids Code";

(c) All steel underground storage tanks with corrosion holes that are repaired shall be retrofitted with a cathodic protection system prior to putting the underground storage tank system back into use. The cathodic protection system shall be installed, maintained and operated in accordance with N.J.A.C. 7:14B-5.2.

(d) All fiberglass underground storage tank systems shall be repaired by an authorized representative of the manufacturer or in accordance with the Fiberglass Petroleum Tank and Pipe Institute's Recommended Practice RPT-89-1 the American Petroleum Institute's Recommended Practice 1631, or the National Leak Prevention Association's Standard 631, Appendix F.

(e) The owner or operator of an underground storage tank system shall replace, not repair, faulty fittings. Loose fittings and joints in piping that have been tightened to eliminate leakage may be put back into service. An entire section of metal piping shall be replaced and not repaired. A section of pipe is considered one length of pipe between two joints, elbows, tees or other fittings.

(f) The owner or operator of an underground storage tank system shall perform a precision tank system test in accordance with N.J.A.C. 7:14B-4.3(j) within 30 days after the repair of the underground storage tank system unless a release detection system meeting the requirements of N.J.A.C. 7:14B-6.4(a) and (c) is installed or is already in place.

(g) The owner or operator of an underground storage tank system shall maintain records of all repairs and associated precision testing at the site or available upon request for as long as the site is in operation or six years, whichever is longer. After a six year period or the site goes out of operation, an owner or operator may make a written request to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(h) Upon receipt of a written request by the Department, the owner or operator shall submit to the Department all records and documents or copies of the same required to be maintained by the Act, this chapter, registration certificates, permits or approvals or administrative orders.

7:14B-5.4 Interim inventory control and manual tank gauging requirements

(a) The owner or operator of an underground storage tank system shall conduct inventory reconciliations on a monthly basis to detect a release of at least one percent of the tank's monthly flow-through plus 130 gallons. The monthly inventory reconciliation shall be based on daily inventory records except in the case of underground storage tank systems located at remote, unmanned sites who may perform volume measurements monthly instead of daily in order to prepare their monthly reconciliations. The following underground storage tank systems are exempted from preparing monthly inventory reconciliations:

1. Underground storage tank systems that contain heating oil for on-site consumption;

2. Waste oil underground storage tank systems, except as described in (c) and (d) below;

3. Field constructed tanks; and

4. Airport hydrant fuel distribution systems.

(b) Inventory control and reconciliation shall be performed as follows:

1. Inventory volume measurements for hazardous substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day, except for underground storage tank systems located at remote, unmanned sites who may perform volume measurements monthly;

2. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

3. The regulated substance inputs shall be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

4. Deliveries shall be made through a drop tube that extends to within one foot of the tank bottom;

5. Product dispensing shall be metered and recorded within New Jersey's standards for meter calibration or an accuracy of six cubic inches for every five gallons of product withdrawn; and

6. The measurement of any water level in the bottom of the tank shall be made to the nearest one-eighth of an inch at least once a month.

(c) Manual tank gauging shall be performed at least weekly for underground storage tank systems containing waste oil as follows:

1. Tank liquid level measurements shall be taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

2. The recorded level measurements shall be based on an average of two consecutive stick readings at both the beginning and ending of a period; and

3. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

(d) A release from an underground storage tank system containing waste oil is suspected and subject to the requirements of N.J.A.C. 7:14B-7 if the variation between beginning and ending measurements, as described in (c) above, exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (One Test)	Monthly Standard (average of four tests)
-----	-----	-----
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons
2,001 gallons & above	1.3 percent of tank volume	.65 percent of tank volume

7:14B-5.5 Release response plan

(a) The owner or operator of an underground storage tank system shall prepare a release response plan which includes the following information:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline (609-292-7172), and any other appropriate local or State agencies;

2. The name and telephone number of the person responsible for the operation of the facility during an emergency if he or she is not present at the facility;

3. The name and telephone number of any retained corrective action contractor; and

4. The procedures to be followed pursuant to N.J.A.C. 7:14B-8 in the event of a leak or discharge of a hazardous substance from the facility.

(b) The release response plan shall be available for onsite inspection within 90 days after the effective date of N.J.A.C. 7:14B-5.

(c) Any release response plan which is required by and is in compliance with the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. will suffice for this requirement.

7:14B-5.6 Right of entry

(a) The owner or operator of an underground storage tank shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

1. Enter upon the site where an underground storage tank is or might be located or in which monitoring equipment or

records required by this chapter are kept, for purposes of inspection, sampling, copying or photographing. Photographing shall be allowed only as related to the underground storage tank system;

2. Have access to and copy any records that must be kept under the conditions of this chapter;

3. Inspect any facilities or equipment (including monitoring and control equipment);

4. Observe practices or operations regulated or required under this chapter; and

5. Sample soil, ground water, surface water and/or air.

SUBCHAPTER 6. MONITORING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-6.1 General monitoring requirements for all underground storage tank systems

(a) The owner or operator of an underground storage tank system shall, in accordance with the schedule in N.J.A.C. 7:14B-4.5, equip each system with a Department-approved monitoring system.

(b) The installation of a discharge monitoring system shall constitute a substantial modification to an existing underground storage tank system and shall require a permit as specified in N.J.A.C. 7:14B-10.1(a).

(c) The owner or operator of an underground storage tank system shall ensure that the monitoring system is:

1. Capable of detecting a leak or discharge from any part of the system;

2. Installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions including, but not limited to, routine maintenance and service checks for proper operation;

3. Checked for proper system operation at least once every 30 days; and

4. Examined for evidence of leaks or discharges either continuously or daily except for the monitoring systems described in N.J.A.C. 7:14B-6.2(a)5.

(d) Electronic monitoring systems installed after December 22, 1990 shall be capable of detecting a release at the rate or quantity specified for that method in N.J.A.C. 7:14B-6.2 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(e) The Department may, in its discretion, specify the monitoring system and/or the method of secondary containment to be used when:

1. The underground storage tank system is subject to excessive corrosion; or

2. A discharge from the facility has been detected.

(f) The owner or operator of an underground storage tank system shall develop written routine monitoring procedures which set forth the following:

1. The frequency with which the monitoring is to be performed;
2. The method and equipment used to conduct the monitoring;
3. The location at which the monitoring is to be performed; and
4. The name and/or titles of the person responsible for performing the monitoring and maintenance of the monitoring system.

(g) The written routine monitoring procedure developed in accordance with (f) above shall be kept at the underground storage tank facility and made available for inspection by any authorized local, State or Federal representative at anytime after installation of the monitoring system. The owner or operator of an existing monitoring system shall have the monitoring procedure available for inspection at any time after the monitoring system is installed.

(h) The person responsible for performing the monitoring and maintenance of the monitoring system shall be trained in the use and maintenance of the equipment.

(i) The owner or operator shall, on a monthly basis, complete a summary of the results of daily or continuous monitoring of the underground storage tank system and maintenance checks of the monitoring system. This summary shall be made available for inspection by any authorized local, State or Federal representative.

(j) All access points accessible to grade for monitoring systems shall be permanently marked or tagged with the words "for monitoring only", the facility number listed on the Registration Certificate and, if applicable, the well drilling permit number.

(k) All pressurized delivery systems shall have:

1. A pressurized shut-down monitoring device which prevents dispensing when a minimum of a 0.10 gallon per hour release has been detected and also where the pressurized shut-down device works independently of another device not expressly manufactured to work in conjunction with the pressurized shut-down monitoring device. An annual test of the operation of this device shall be conducted in accordance with the manufacturer's requirements; or

2. A line release detector which detects releases at a minimum of three gallons per hour at 10 pounds pressure per square inch line pressure within one hour and restricts flow to the dispenser in the event of a release, an annual test of the

operation of this device conducted in accordance with the manufacturer's requirements, and at least one of the following:

1. A discharge detection monitoring system on the piping which meets the requirements of N.J.A.C. 7:14B-6.2(b)1, 2, or 3;

2. A leak detection monitoring system on the piping which meets the requirements of N.J.A.C. 7:14B-6.2(b)1, 2, or 3; or

3. For existing underground storage tank systems which meet the conditions of N.J.A.C. 7:14B-6.2(d), an annual precision test of the piping shall be performed in accordance with N.J.A.C. 7:14B-4.3(j).

(1) The Department may, in its discretion, approve a monitoring system not specified in this subchapter upon the submittal to the Bureau of Underground Storage Tanks by the owner or operator of data indicating that the proposed monitoring system is in conformance with N.J.A.C. 7:14B-6.1 and is equivalent to the effectiveness of the monitoring systems listed in N.J.A.C. 7:14B-6.2.

7:14B-6.2 Monitoring requirements for new underground storage tank systems

(a) The owner or operator of a new underground storage tank system that requires secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall install a leak detection monitoring system which shall, except as specified in (a)5 below, employ a continuous leak detection monitoring system connected to an audible and/or visual alarm system or a manual leak detection inspection shall be performed on a daily basis. Department-approved leak detection monitoring systems include the following:

1. Liquid level indicators which detect a change in the height of a fixed volume of liquid in an annular space;

2. Liquid sensors as follows:

- i. For double-walled tanks and similar secondarily contained single-walled tanks, at least one sensor or device shall be employed to detect liquid in the annular space; or

- ii. For lined excavations, at a minimum, one monitoring location in each of the four corners of the excavation or a slotted pipe located lengthwise and underneath each tank, sloped to a collection point and accessible at grade for monitoring of liquids;

3. For volatile hazardous substances, vapor sensors as follows:

i. For double-walled tanks and similar secondarily contained single-walled tanks, at least one sensor or device shall be located to detect vapors from any part of the annular space; or

ii. For lined excavations, at a minimum, one monitoring location in each of the four corners of the excavation or a u-tube;

4. Pressure and/or vacuum loss sensors; or

5. Monthly precision testing in accordance with N.J.A.C. 7:14B-4.3(j) and inventory control conducted in accordance with N.J.A.C. 7:14B-5.4.

(b) The owner or operator of a new underground storage tank that is not specified in N.J.A.C. 7:14B-4.1(d) and therefore does not require secondary containment shall install and operate a Department approved leak detection monitoring system as specified in (a) above if the tank system is secondarily contained. If the tank system was not secondarily contained at the time of tank installation, the owner or operator shall install and operate a discharge monitoring system using one of the following methods:

1. Daily or continuous testing for vapors within the fill of the excavation area (or adjacent to the tank system) upon a determination that:

i. The material used as backfill is sufficiently permeable (at least 0.01 centimeter per second) to readily allow diffusion of vapors from discharge into the excavation area;

ii. The stored hazardous substance or a tracer compound placed in the system is sufficiently volatile to result in a vapor level that is detectable by sensors employed in the excavation area in the event of a release;

iii. The measurement of vapors by the monitoring system is not adversely affected by ground water, rainfall or soil moisture or other known interferences;

iv. The level of background interference in the soil vapor of the excavation zone will not interfere with the method used to detect releases;

v. The detection limit of the vapor monitoring system is set at no more than 100 percent over the background level as determined during the calibration period recommended by the manufacturer;

vi. The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination; and

vii. Within and immediately below the underground storage tank system excavation area, the site is evaluated to ensure that the number and positioning of the monitoring locations or sensors in the excavation will detect releases from any portion of the underground storage tank system;

2. Daily or continuous testing for hazardous substances on the water table using discharge detection observation wells under the following conditions:

i. The stored hazardous substance is immiscible in water and has specific gravity of less than one;

ii. The water table is never more than 20 feet from the ground surface and the hydraulic conductivity of the fill between the underground storage tank system and the discharge detection observation wells is not less than 0.01 centimeters per second;

iii. All the monitoring locations intercept the excavation area (or are adjacent to the tank system) and intercept the water table.

iv. The sensors or devices that are used are able to detect the presence of at least one-eighth of an inch of floating free phase hazardous substance on top of the water table;

v. The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination;

vi. Within and immediately below the underground storage tank system excavation area, the site is evaluated to ensure that the number and positioning of the monitoring locations or sensors in the excavation will detect releases from any portion of the underground storage tank system; or

3. Daily or continuous testing for vapors or liquids in discharge detection observation wells or u-tubes in combination with an impermeable liner in the bottom of the excavation area under the following conditions:

i. Testing for vapors meets the specifications in (b)1 above;

ii. Testing for hazardous substances where:

(1) The hydraulic conductivity of the fill between the underground storage tank system and the discharge detection observation wells or u-tubes is not less than 0.01 centimeters per second;

(2) The sensors or devices that are used are able to detect at least one-eighth inch of hazardous substance in the discharge detection observation well or collection sump; and

(3) The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination;

iii. The liner shall be extended from the bottom of the excavation to at least two feet up the sides of the excavation;

iv. The ground water table shall be determined to always be below the bottom of the excavation;

v. The liner shall also meet the conditions specified in N.J.A.C. 7:14B-4.4(d) 4, 5 and 6; and

vi. The liner shall be designed to prevent precipitation, ground water, or soil moisture from entering the excavation area.

4. The owner or operator of an underground storage tank system located on a site where conditions as specified in (b)1, 2 or 3 above preclude the use of testing for vapors or hazardous substances shall take one of the following actions:

i. Perform in-tank monitoring provided that:

(1) The automatic level monitor test or release rate test is conducted at a minimum once every 30 days when the tank is at least 50 percent full and capable of detecting a 0.2 gallon per hour release rate with a 95 percent probability of detection and a five percent probability of false alarm. One test shall be conducted annually when the tank is at least 80 percent full; and

(2) Inventory reconciliation is conducted in accordance with the requirements of N.J.A.C. 7:14B-5.4;

ii. Upgrade the underground storage tank system to the requirements of N.J.A.C. 7:14B-4.4; or

iii. Close the underground storage tank system in accordance with the requirements of N.J.A.C. 7:14B-9.2.

(c) The minimum number of monitoring locations or discharge detection observation wells required for discharge monitoring systems not using u-tubes are as follows:

Total Capacity in Gallons Per Tank Excavation	Minimum Number of Monitoring Devices or Locations
0-10,000	2
10,001-20,000	3
20,001-30,000	4

30,001-40,000	5
40,001-50,000	6
50,001 or greater	7

(d) The owner or operator of an underground storage tank who intends to install an in tank monitoring device as specified in (b)4 above for an existing underground storage tank system that is not equipped with secondary containment but is located in an area specified in N.J.A.C. 7:14B-4.1(d)2, shall perform a site assessment in accordance with the closure requirements of N.J.A.C. 7:14B-9 prior to obtaining Department approval of the in-tank monitoring device.

(e) The owner or operator of a single-walled underground storage tank system of 1000 gallons or less capacity for storing waste oil shall conduct manual tank gauging as specified in N.J.A.C. 7:14B-5.4, if the use of monitoring systems specified in (b) 1, 2, 3 or 4 above is precluded.

(f) The owner or operator of a new underground storage tank system used as a sump shall be exempt from discharge monitoring requirements as long as a hazardous substance is not stored for more than 48 hours.

(g) Electronic monitoring systems shall detect, at a minimum, a 0.2 gallon per hour release rate or a release of 150 gallons within a month with a probability of detection of 0.95 and probability of false alarm of 0.05.

7:14B-6.3 Monitoring requirements for piping on new underground storage tank systems

(a) The owner or operator of a new underground storage tank that requires secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall equip the product-bearing appurtenant piping with at least one of the following:

1. Single-walled piping with a suction pump system if:
 - i. The below-grade piping operates at less than atmospheric pressure;
 - ii. Only one check valve is included in each suction line;
 - iii. The check valve is located directly below, and as close as practical to, the suction pump;
 - iv. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if suction is released; and

v. A method of inspecting the piping is provided that allows compliance with this paragraph to be readily determined;

2. Piping with secondary containment consistent with the requirements of N.J.A.C. 7:14B-4.2(a)1, 2 or 5 and equipped with one of the following daily or continuous detection monitoring systems:

i. Vapor sensors where at least one sensor shall be employed to detect any vapor in the annular space or where there is at least one sensor or monitoring location for every 50 linear feet of piping between the tank and the dispenser in a lined excavation and:

(1) The material used as backfill shall be sufficiently permeable (at least 0.01 centimeters per second) to readily allow diffusion of vapors from leaks to the monitoring location in the lined excavation;

(2) The stored hazardous substance is sufficiently volatile to result in a vapor level that is detectable by sensors employed in the annular space or lined excavation area;

(3) The level of background interference in the fill material in the lined excavation area will not interfere with the method used to detect releases; and

(4) The monitoring locations are clearly marked and secure from unauthorized access and contamination.

ii. Liquid sensors where at least one sensor shall be employed to detect any liquid in the annular space piping chamber or each collection sump of a lined excavation which meet the following additional conditions:

(1) The material used as backfill in the lined excavation is sufficiently porous (at least 0.01 centimeters per second) to readily allow the migration of the hazardous substance to the monitoring location;

(2) The monitoring device is able to detect at least one-eighth inch of floating free phase hazardous substance;

(3) Lined excavations have a monitoring location or device every 50 feet from the tank to the dispenser; and

(4) The monitoring locations are clearly marked and secure from unauthorized access and contamination.

3. Single-walled or secondarily contained piping with a pressurized shut-down monitoring device in accordance with N.J.A.C. 7:14B-6.1(k)1.

(b) The owner or operator of a new underground storage tank which is not required to have secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall equip the product-bearing appurtenant piping with at least one of the following:

1. A leak detection monitoring system authorized by (a) above for a secondarily contained tank system; or
2. A discharge monitoring system which meets the requirement of N.J.A.C. 7:14B-6.2(b)1, 2 or 3; or
3. A monitoring device in accordance with N.J.A.C. 7:14B-6.1(k).

(c) The owner or operator of an underground storage tank system which contains hazardous substances other than petroleum products who intends to utilize the monitoring system options of (a)1 or 3 above shall demonstrate to the Department that effective corrective action technology is available for the hazardous substance to be stored.

7:14B-6.4 Monitoring requirements of existing underground storage tank and piping systems

(a) The owner or operator of an existing underground storage tank with Department-approved secondary containment shall install and operate a leak detection monitoring system which meets the requirements of N.J.A.C. 7:14B-6.2(a) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(b) The owner or operator of an existing piping system with Department-approved secondary containment shall install and operate a leak detection monitoring system which meets the requirements of N.J.A.C. 7:14B-6.3(a) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5

(c) The owner or operator of an existing single-walled tank shall install and operate a discharge monitoring system which meets the requirements of N.J.A.C. 7:14B-6.2(b) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(d) The owner or operator of an existing underground storage tank system with an existing monitoring system installed prior to the effective date of this subchapter shall comply at a minimum with N.J.A.C. 7:14B-4.5(e).

(e) The owner or operator of an existing single-walled piping system shall install and operate a monitoring system which meets the requirements of N.J.A.C. 7:14B-6.3 in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

7:14B-6.5 Construction requirements for monitoring systems using screen and casing

(a) Monitoring systems such as vapor or liquid sensors and discharge detection observation wells which use screen and casing and which are being placed in the excavation area during installation of an underground storage tank system do not require a well permit as specified in N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act. These monitoring systems shall be constructed in the following manner:

1. Screen and casing materials shall be compatible with the substances stored in the underground storage tank system so as not to preclude the use of the monitoring system;

2. Solid casing shall extend at least two feet below the surface. Glue shall not be used to attach screen to casing. The casing shall be grouted with at least two feet of neat cement to protect against surface infiltration. Screens shall be capped at the bottom;

3. All monitoring systems using screen and casing shall have protective coverings at the surface. Grade level access ports shall be four inches greater in diameter than the casing, watertight and strong enough to withstand the anticipated traffic load. For casing that extends above grade, a protective outer casing at least four inches greater in diameter than that of the inner casing shall be used. The protective coverings shall be seated in neat cement;

4. The top of the screen shall be located at least two feet above the seasonal high water table and five feet into the water table for ground water observation wells;

5. The innermost casing or cap shall be perforated with one hole to allow for venting; and

6. The screen shall be designed to minimize migration of natural soils or filter pack in the well.

(b) The owner or operator of a proposed monitoring system not in conformance with N.J.A.C. 7:14B-6.5(a) shall comply with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act.

7:14B-6.6 Recordkeeping

(a) The owner or operator of an underground storage tank system shall maintain the following records:

1. All written performance claims pertaining to any monitoring system used and the manner in which these claims have been justified or tested by the equipment manufacturer or installer. These records shall be kept for a period of six years;

2. The results of any sampling, testing or monitoring, and monthly inventory reconciliations for a period of no less than six years; and

3. Written documentation of all calibration, maintenance and repair of monitoring system equipment shall be maintained for a period of no less than six years after the servicing work is performed.

(b) Owners and operators of underground storage tank systems may be required to submit records required by (a) above to the Department.

(c) After the six year period required in (a) above, an owner or operator may make a written request to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(d) Upon receipt of a written request by the Department, the owner or operator shall submit to the Department all records and documents or copies of the same required to be maintained by the Act, this chapter, registration certificates, permits or approvals or administrative orders.

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.1 Suspected releases

(a) The owner or operator of an underground storage tank system shall complete an investigation of a suspected release in accordance with the requirements of N.J.A.C. 7:14B-7.2(a) within seven days of the discovery of the suspected release, when any of the following situations have occurred:

1. Inventory control records maintained in accordance with N.J.A.C. 7:14B-5.4(a) and (b) indicate a release may have occurred in excess of one percent of the tank's monthly flow-through plus 130 gallons;

2. Inventory control records for an underground storage tank system containing waste oil maintained in accordance with the manual tank gauging requirements of N.J.A.C. 7:14B-5.4(c) indicate that a release of hazardous substances may have occurred;

3. There is evidence of a hazardous substance or resulting vapors in the soil, in surface water, or in any underground structure or well in the vicinity of the facility;

4. There is an unexplained presence of water in the underground storage tank;

5. Product dispensing equipment exhibits erratic behavior;

6. There is the sudden loss of product from the underground storage tank system;

7. Test results from a single precision test of an underground storage tank system performed in accordance with N.J.A.C. 7:14B-4.3(j)1 through 5 that indicates that a release may have occurred; or

8. Any other method of discovery of a suspected release.

7:14B-7.2 Investigating a suspected release

(a) The owner or operator of an underground storage tank system shall confirm or disprove a suspected release by conducting an investigation in accordance with one or more of the following procedures:

1. Check inventory control records for mathematical accuracy;

2. Conduct a visual inspection of all readily accessible physical facilities for evidence of leakage or discharge;

3. Check the calibration of all dispenser meters associated with hazardous substance withdrawal and if necessary perform calibration; or

4. Check for a malfunction of the monitoring system.

(b) If the investigation conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator shall:

1. For underground storage tank systems containing gasoline, jet fuel or kerosene, within 90 days after conducting the investigation required in (a) above, conduct analyses of ground water samples for hazardous substance contamination on the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system; and

2. Conduct any other appropriate investigation designed to confirm or disprove a suspected release.

3. For underground storage tank systems containing other hazardous substances - RESERVED.

7:14B-7.3 Confirmed releases

(a) Any person, including, but not limited to, the owner or operator of an underground storage tank system or contractor hired to install, remove or test an underground storage tank system shall, upon confirming a release, immediately report the release to the appropriate local health agency in accordance with local requirements, and to the Department's Environmental Action Hotline (609) 292-7172. Releases may be confirmed on the basis of the following:

1. Test, sampling or monitoring results from a leak or discharge detection method specified in N.J.A.C. 7:14B-6.2, 3 and 4 that indicate that a release has occurred;

2. Analyses by a laboratory, certified pursuant to N.J.A.C. 7:18, of ground water samples which indicate the presence of contamination in the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system;

3. Results from a closure plan conducted in accordance with the requirements of N.J.A.C. 7:14B-9.2(b) or 9.3(b) which indicate the presence of contamination in the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system;

4. Any other method, including visual inspection, that confirms that a release has occurred; or

5. A release is confirmed based upon the investigation conducted under N.J.A.C. 7:14B-7.2.

(b) When notifying the Department in accordance with (a) above, the following information shall be provided:

1. The type and estimated quantity of substance released;

2. The location of the release;

3. The actions being taken to contain, clean up, and/or remove the substance; and

4. Any other relevant information which the Department may request at the time of notification.

(c) The owner or operator of an underground storage tank system shall take corrective action as set forth in N.J.A.C. 7:14B-8 when a release is confirmed.

(d) The owner or operator of an underground storage tank system shall implement the release response plan required by N.J.A.C. 7:14B-5.5 when a release is confirmed.

(e) The owner or operator of an underground storage tank system containing hazardous substances other than petroleum or waste oil shall report a discharge of the substance, over its reportable quantity, to the National Response Center in accordance with the provisions of 40 CFR Part 302.

SUBCHAPTER 8. CORRECTIVE ACTION

7:14B-8.1 Immediate corrective action requirements and procedures

(a) The owner or operator of an underground storage tank system shall, upon confirming a release, take immediate action to:

1. Determine the source of the discharge;
2. Cease use of the underground storage tank system;

i. In the event that ceasing use of the underground storage tank system would precipitate an emergency which constitutes an immediate threat to human health and safety, then the owner/operator shall cease use of the underground storage tank system immediately subsequent to taking all necessary actions to abate the emergency.

ii. Where a building's sole source of heat is from an oil burner, and there has been a discharge from the underground storage tank system containing heating oil, then the owner/operator shall take immediate action to provide an alternate source of heat. Upon providing an alternate source of heat, the owner/operator shall immediately cease use of the underground storage tank system which has discharged.

3. Mitigate any fire, safety or health hazard including, but not limited to, hazards from combustible vapor or vapor inhalation and the removal of ignition sources, in accordance with appropriate standards and practices, including National Fire Protection Association Standard 329, "Underground Leakage of Flammable and Combustible Liquids", incorporated herein by reference;

4. Conduct a visual inspection to detect any above ground or exposed below ground discharge, and where any discharge is evident, mitigate the effects of the discharge;

5. Properly remove all hazardous substances from the underground storage tank system;

6. Repair, replace or close the underground storage tank system in accordance with the requirements of N.J.A.C. 7:14B-4, 5 and 9; and

7. Comply with the reporting requirements set forth in N.J.A.C. 7:14B-7.3.

7:14B-8.2 Discharge mitigation requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall:

1. Remove free floating or sinking product (non-aqueous phase liquids) from above or below the water table in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. If this activity will result in a discharge regulated in accordance with N.J.A.C. 7:14A, a New Jersey Pollutant Discharge Elimination System Permit shall be obtained before discharge activities are begun;

2. Remove or decontaminate soils that contribute to a violation of the State's Ground Water Quality Standards (N.J.A.C. 7:9-6), Surface Water Quality Standards (N.J.A.C. 7:9-4) or any other standards, including soil standards adopted by the Department, or that will result in vapor hazards, or that pose a threat to human health due to direct contact. All excavated soils shall be staged in such a manner that the soils are isolated from the environment and any hazardous substances in the soils are prevented from making contact with or being released into the environment. At a minimum, this shall entail removal or decontamination of free product contaminated soils;

3. For underground storage tank systems containing gasoline, jet fuel or kerosene, install monitoring wells to define the full vertical and horizontal extent of ground water contamination resulting from the discharge;

4. Determine the proximity of the discharge to the following:

i. Public water supply wells, industrial supply wells and other wells with water allocation permits within one mile and non public water supply wells within one-half mile;

ii. Surface water bodies and wetlands within one-half mile;

iii. Underground structures on site and on adjacent properties; and

iv. Surrounding population within one-half mile;

5. Perform additional ground water and soil remediation as required by the Department under this subchapter and N.J.A.C. 7:14A-6.15; and

6. If ground water contamination is found, the nearest downgradient potable well and the nearest potable well potentially affected by contamination flowing preferentially along each subsurface structure (that is, storm/sanitary sewers, telephone conduits and cable vaults) shall be sampled and analyzed. Analyses must be targeted to the substances released.

(b) The Department may, in its discretion, approve a discharge investigation or mitigation method not specified in this subchapter upon a determination that it is at least as stringent as the approved standards in this section.

7:14B-8.3 Reporting requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall provide the local health department and the Department with a written report within 120 days of the notification of N.J.A.C. 7:14B-7.3, containing the following information:

1. The results of all work conducted to comply with the requirements of N.J.A.C. 7:14B-8.1 and 8.2;
2. The nature, estimated quantity and migration route of the hazardous substance;
3. Results from a site investigation which identifies on an area-wide map:
 - i. Non-public water supply wells, surface water bodies and wetlands within one-half mile of the discharge;
 - ii. Public water supply wells, industrial supply wells and other wells with water allocation permits within one mile of the discharge;
 - iii. Basements and subsurface utilities on adjacent properties; and
 - iv. Surrounding population, land use and subsurface soil conditions;
4. The results of any monitoring or sampling conducted in connection with the discharge. All samples shall be collected in accordance with the Department's Division of Hazardous Site Mitigation's Field Sampling Procedures Manual and/or the Division of Water Resource's Field Procedures Manual for Water Data Acquisition. All samples collected shall be analyzed by a laboratory certified pursuant to N.J.A.C. 7:18. The laboratory shall meet the performance standards and quality control requirements specified in N.J.A.C. 7:18 and 40 CFR Part 136 for water and wastewater analysis and in USEPA's manual "Testing Methods for Evaluating Solid Waste" (SW-846 Third Edition) for solid waste analyses. All samples shall be analyzed for parameters that are representative of the substances which have been stored in and/or discharged from the underground storage tank system;
5. A detailed description of corrective actions taken and any actions planned, including an implementation schedule;

6. A certification signed by the owner or operator as required by N.J.A.C. 7:14B-2.3(d)2; and

7. Any other relevant information requested by the Department.

(b) The report described in (a) above shall be prepared by a qualified ground water consultant. The preparer of the report shall sign the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and was obtained by procedures in compliance with this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(c) In addition to the requirements listed in (a) above, the owner or operator of an underground storage tank system which has discharges a hazardous substance shall report the following to the Department and to the appropriate local health agencies and, in addition, for (c)1 below, the local fire department in accordance with local requirements:

1. The discovery of any vapor hazard;
2. The discovery of contaminated potable water supply wells; and
3. A schedule for performing the following activities prior to their implementation:
 - i. Dates of tank or piping removal;
 - ii. Date of well installation; and
 - iii. Date of sample collection.

7:14B-8.4 Health and safety requirements

All investigative and corrective action activities required under this chapter shall be undertaken in a manner consistent with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (165.5)) incorporated herein by reference, and U.S. Department of Labor's Occupational Safety and Health Administration's Safety and Health Standards (29 CFR Part 1910 and 1926 (1989)) incorporated herein by reference.

7:14B-8.5 Additional corrective action requirements

Upon review of the report required by N.J.A.C. 7:14B-8.3(a), the Department may require the owner of an

underground storage tank system which has discharged a hazardous substance to apply for a New Jersey Pollutant Discharge Elimination System Permit, in accordance with N.J.A.C. 7:14A and satisfy the corrective action program requirements in N.J.A.C. 7:14A-6.15.

7:14B-8.6 Leak mitigation requirements

(a) The owner or operator of an underground storage tank system which has leaked a hazardous substance into the annular space created by the secondary containment system shall:

1. Determine the source of the leak;
2. Properly remove all hazardous substances from the underground storage tank system; and
3. Repair, replace or close the underground storage tank system in accordance with the requirements of this chapter.

(b) Within 30 days after reporting a leak into the annular space of an underground storage tank system in accordance with N.J.A.C. 7:14B-7, the owner or operator shall provide the Department with a written report containing a detailed description of the corrective actions taken concerning the leak into the annular space.

7:14B-8.7 Recordkeeping

(a) As of the effective date of this subchapter, the current and subsequent owners of the property on which an underground storage tank system exists and was closed shall maintain all records generated to comply with the requirements of this subchapter. These records shall be maintained indefinitely.

(b) These records shall be submitted for inspection upon request by any authorized local, State and/or Federal representative.

**SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS
AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS**

7:14B-9.1 General Requirements

(a) The owner or operator of an underground storage tank system which is empty for a period of 12 months or less after the effective date of this subchapter shall maintain all existing cathodic protection systems as required by N.J.A.C. 7:14B-5.2 and shall follow the procedures in American Petroleum Institute Recommended Practice 1604 "Removal and Disposal of Used Underground Petroleum Storage Tanks", incorporated herein for reference, for placing a tank system temporarily out of service. The owner or operator of such tank systems are required to comply with N.J.A.C. 7:14B-7 and 8 during the temporary closure period. The owner and operator of a temporarily closed underground storage tank system shall install spill and overfill prevention in accordance with the requirements of N.J.A.C. 7:14B-4.1(c) and release detection in accordance with the requirements of N.J.A.C. 7:14B-6 either by September 3, 1991 or at the time the underground storage tank system is put back into use, whichever is later. The Department shall be notified in writing on forms provided by the Department of any tank system which is undergoing temporary closure.

(b) The owner or operator of an underground storage tank system which has been empty for more than 12 months shall close the tank system. The owner or operator may request an extension from the Department of this 12 month period, by submitting a site assessment in accordance with N.J.A.C. 7:14B-9.2 or 7:14B-9.3 at least 30 days prior to the expiration date.

(c) The owner or operator closing an underground storage tank system shall:

1. Remove the tank except as provided in (d) below; and
2. Remove any monitoring system unless the monitoring system will be used for a new tank system or for monitoring a release in accordance with N.J.A.C. 7:14B-8.2(a)3.

(d) The Department may, in its discretion, allow the owner or operator of an underground storage tank system to abandon the system in place if:

1. The underground storage tank is located under a permanent structure; or
2. The owner or operator submits a certification, signed and sealed by a New Jersey Professional Engineer, stating that removal of the underground storage tank will cause damage to another structure, or that the tank is difficult to remove from the ground because of inaccessibility or type of tank construction.

(e) The owner or operator of an underground storage tank system considering a change in storage to a non-regulated substance, shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with N.J.A.C. 7:14B-9.2 or 9.3.

7:14B-9.2 Closure requirements for underground storage tank systems containing petroleum products

(a) The owner or operator of an underground storage tank system containing petroleum products who intends to permanently close the underground storage tank system shall, 30 days prior to the anticipated closure date, notify the Department in writing on forms provided by the Department. This notification shall include:

1. The facility registration number;
2. A statement as to whether the tank system is being removed or abandoned in place;
3. Three copies of a detailed implementation schedule;
4. If abandonment in place is being proposed, the information required by N.J.A.C. 7:14B-9.1(d) shall be provided; and
5. If the facility is not registered as required by N.J.A.C. 7:14B-2.2, the owner or operator shall attach a completed New Jersey Underground Storage Tank Registration Questionnaire with the appropriate fee as specified by N.J.A.C. 7:14B-3.1.

(b) The owner or operator who intends to close an underground storage tank containing petroleum products shall develop and implement a closure plan which consists of a site assessment and a tank decommissioning plan. The Department or the county health agency as designated pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. shall require the owner or operator to submit the closure plan for review prior to implementation and the Department or designated county health agency shall disapprove or require modification of the plan if the plan does not meet the requirements of this subchapter. Closure shall not be undertaken before a closure plan approval is obtained from the Department or designated county health agency. The closure plan shall include the following:

1. An implementation schedule;
2. A site assessment plan as described in (c) below prepared by a qualified ground water consultant.
3. A tank decommissioning plan which conforms with:

i. The New Jersey Uniform Construction Code, N.J.A.C. 5:23; and

ii. The American Petroleum Institute Bulletin No. 1604, "Recommended Practice for Abandonment and Removal of Used Underground Storage Tanks"; and

4. A plan for removal of all residual liquids, solids or sludges from the tank and appurtenant piping by draining, pumping or in-tank cleaning and disposing of such material and the tank in accordance with all applicable Federal, State and local rules and regulations.

(c) The site assessment plan for gasoline, kerosene, and jet fuel shall, at a minimum, consist of ground water monitoring wells drilled in accordance with well drilling requirements promulgated pursuant to N.J.S.A. 58:4A-4.1 et seq.

1. The wells shall be screened in the first water encountered and the screens shall be placed a minimum of three feet above the water table wherever possible and five feet below the water table. When ground water is not encountered within 75 feet of the surface, or when site conditions preclude drilling to this depth, the Department may, in its discretion, approve another method of site assessment;

2. The wells shall be located as close as practical to the location of the underground storage tank;

3. The wells shall be placed in the anticipated downgradient direction of ground water flow;

4. The necessary number of wells will be determined by the preparer of the site assessment, using his or her best professional judgment, and based on the following minimum criteria:

i. One tank up to 20 feet in length requires one well;

ii. Two to three tanks up to 20 feet in length in the same excavation require two wells;

iii. Each pump island or dispenser that is more than 20 feet away from the tanks or located in a position hydraulically down-gradient of other monitoring wells requires one well for each island; and

iv. Additional monitoring wells will be necessary for extensive runs of piping at facilities including, but not limited to:

(1) Bulk storage terminals,

(2) Refineries, large industrial complexes, and multiple buildings served by a centralized underground heating system.

5. The monitoring wells shall be properly developed and sampled in accordance with the Department's Division of Water Resources Field Procedures Manual for Water Data Acquisition and/or the Division of Hazardous Site Mitigation Field Sampling Procedures Manual. In addition, the ground water samples shall be analyzed for contamination as specified by the Department. The depth of the water table in each well shall be noted and reported with the sampling results.

7:14B-9.3 Closure requirements for underground storage tank systems containing hazardous substances other than petroleum products

(a) The owner or operator of an underground storage tank system regulated by the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26, shall follow the closure procedures in that chapter (see N.J.A.C. 7:26-9).

(b) The owner or operator of an underground storage tank system containing a hazardous substance which is not a petroleum product or a hazardous waste shall comply with the following closure procedures:

1. A closure plan shall be submitted to the Department for review and approval at least 45 days in advance of the anticipated closure date.

2. The closure plan shall contain all the information required by N.J.A.C. 7:14B-9.2(a), (b), and (c).

7:14B-9.4 Exemptions to site assessment

(a) Facilities shall be exempt from performing the site assessment portion of the closure plan as described in N.J.A.C. 7:14B-9.2 and 9.3 if the owner or operator of the facility submits documents showing:

1. The installation of ground water monitoring wells at the facility in accordance with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act;

2. The installation of secondary containment and monitoring systems as defined in N.J.A.C. 7:14B-4 and 6 where there were no underground storage tank systems at the facility prior to the existing system;

3. The installation of vapor sensors as an approved monitoring system as specified in N.J.A.C. 7:14B-6.2(b)1; or

4. The facility is undergoing corrective action pursuant to N.J.A.C. 7:14B-8 or a New Jersey Pollutant Discharge Elimination System permit to discharge to ground water in accordance with N.J.A.C. 7:14A.

(b) In addition to submitting the documents in (a) above, before receiving an exemption, the owner or operator shall provide the Department with information which shows that the facility:

1. Is in compliance with all other requirements in this chapter;

2. Has never has a reportable release or a suspected release which was not fully investigated;

(c) The owner or operator shall include a certification with the information set forth above as required by N.J.A.C. 7:14B-2.3(d)3.

(d) The owner or operator of a facility desiring an exemption shall submit the supporting information to the Bureau of Underground Storage Tanks for review and approval at least 45 days in advance of the anticipated closure date.

7:14B-9.5 Reporting and recordkeeping requirements

(a) The owner or operator of an underground storage tank closed after September 4, 1990 shall, within 90 days of completing implementation of the closure plan, submit the following information to the Department:

1. A site diagram with a plan view which indicates the locations of the groundwater monitoring wells, all major structures and utilities, approximate property boundaries, and all existing or closed underground storage tank systems including appurtenant piping and a cross-sectional view indicating depth of tank, stratigraphy and location of water table;

2. A summary of the site assessment sampling results and depths to water table in tabular form and keyed to the site diagram;

3. A certification, signed by the preparer of the site assessment plan, which states the following with regard to the site assessment portion of the closure plan:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and was obtained by procedures in compliance with this subchapter. I am aware that there are significant civil and criminal penalties for

submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

4. A certification signed by the person performing the tank decommissioning portion of the closure plan which states the following:

"I certify under penalty of law that tank decommissioning activities were performed in compliance with N.J.A.C. 7:14B-9.2(b)3. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

5. Certifications, signed by the appropriate representatives of the owner or operator of the closed underground storage tank system, in accordance with the requirements of N.J.A.C. 7:14B-2.3(d)4.

(b) The owner or operator of a closed facility may be required to submit additional information regarding site conditions depending upon the sampling results in order to ensure compliance with the requirements of this subchapter.

(c) Any person, including but not limited to, the owner or operator shall report any evidence of contamination discovered during closure activities in accordance with the procedures in N.J.A.C. 7:14B-7.3 and perform corrective action in accordance N.J.A.C. 7:14B-8.

(d) The owner of the property on which an underground storage tank system exists and was closed shall maintain all records generated to comply with the requirements of this subchapter. These records shall be made available to the Department upon request for an indefinite period of time.

(e) These records shall be made available for inspection by any authorized local, State and/or federal representative and shall be submitted to the Department if required.

**SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE
TANK SYSTEMS**

7:14B-10.1 General permitting requirements and procedures

(a) Any person who owns or operates, or is proposing to own or operate an underground storage tank system shall, except as provided for under (b) below:

1. Obtain a permit from the Department prior to replacing, installing, expanding or substantially modifying the underground storage tank system; and

2. Obtain a construction permit issued pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to installing, expanding or substantially modifying the underground storage tank system.

(b) Any person who owns or operates, or is proposing to own or operate an underground storage tank that is or will be equipped with one of the Department approved method of secondary containment or devices specified in N.J.A.C. 7:14B-4.4 and 7:14B-6.3(a)2, shall obtain a construction permit issued pursuant to the New Jersey Uniform Construction Code, (N.J.A.C. 5:23, prior to installation and shall maintain at the underground storage tank facility the site diagrams and plans and specifications required by N.J.A.C. 7:14B-10.2(a)2.

(c) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system and intends to replace, install, expand or substantially modify the underground storage tank system shall complete and submit a separate permit application for each activity in each excavation area.

(d) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system which requires a permit under this subchapter, shall complete and submit the permit application form at least 45 days in advance of the anticipated date of initiating the activity for which the permit is required. Emergency Permits may be obtained as specified in N.J.A.C. 7:14B-10.8.

(e) Permit application forms shall be obtained from and accurately completed, signed, dated and returned to:

Bureau of Underground Storage Tanks
Permitting Unit
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

(f) Any person who owns or operates, or is proposing to own or operate an underground storage tank system which requires a

permit under this subchapter, shall provide the following information on the permit application form:

1. The activity to be conducted at the facility or site which requires the person to obtain a permit;
2. The name, mailing address, and location of the facility site where the activity will take place;
3. The facility owner's and operator's name, address, and telephone number;
4. The name, address, and telephone number of the applicant's authorized agent, where applicable;
5. A listing of all the permits or construction approvals received or applied for in relation to the proposed activity;
6. A certification by the owner or operator as required by N.J.A.C. 7:14B-2.3(d)5.
7. Any other relevant information which the Department, in its discretion, requires.

(g) Depending on which underground storage tank permit is being sought, the owner or operator must provide the additional information required in N.J.A.C. 7:14B-10.2 through 10.5.

(h) The Department may issue a permit to the owner or operator of an existing or proposed underground storage tank system upon a determination that:

1. The owner or operator proposes to construct the underground storage tank system with materials that meet or exceed the standards contained in the New Jersey Uniform Construction Code, N.J.A.C. 5:23;
2. The owner or operator proposes to equip the underground storage tank system with a monitoring system meeting the requirements of N.J.A.C. 7:14B-6;
3. The owner or operator proposes to equip the underground storage tank system with corrosion control meeting the requirements of N.J.A.C. 7:14B-4.1(g), (h), (i) or (j);
4. The owner or operator proposes to equip the underground storage tank system with spill and overflow protection meeting the requirements of N.J.A.C. 7:14B-4.1(c);
5. The owner or operator of an underground storage tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed

from that system will not interact in a way that may undermine the integrity of the system or promote corrosion; and

6. The permit application form is accurate and complete, and all application fees have been paid in accordance with N.J.A.C. 7:14B-3.

(i) Any person who has been issued a permit under this section shall be required to notify the Department or the local code enforcement official seven days in advance of beginning one or more of the activities listed in (a) above. This shall be done to allow a Department or local code enforcement official to inspect the facility and determine whether the facility is in compliance with all applicable rules and regulations.

7:14B-10.2 Additional application requirements for the installation of underground storage tank systems not equipped with secondary containment

(a) In addition to the general permitting requirements and procedures set forth in the subchapter, any owner or operator that intends to install an underground storage tank system which is not equipped with secondary containment as specified in N.J.A.C. 7:14B-4.4 and 7:14B-6.3(a)2 on either the tank or the appurtenant piping shall:

1. Submit two copies of a set of plans and specification signed and sealed by a New Jersey professional engineer, drawn to scale and depicting the top, front, and side views of the proposed underground storage tank system installation. Plans submitted shall show all information and details necessary to indicate compliance with this chapter and shall include a certification by the New Jersey professional engineer which states the following:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this chapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

1. The Professional Engineer shall sign and seal and submit to the Department the record drawings where they differ from the proposed plans and specifications; and

2. Submit three copies of the site diagram showing the size and location of all new underground storage tank systems, all existing structures on the site, and distances from lot lines.

(b) Where the set of plans and specifications are or will be used repeatedly at different underground storage tank system

facilities, the plans attached to the first application for a Department installation permit and accompanied by a request for the designation may, following approval by the Department, be designated as a "prototype or master plan." An additional copy of the signed and sealed plans shall be submitted to the Department for retention. Subsequent permit applications shall consist of three copies each of the site diagram required by (a)2 above, signed and sealed by a New Jersey professional engineer, and a reference to the original approval of the "prototype or master plan".

7:14B-10.3 Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment

(a) In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, any person planning to install a discharge monitoring system on an existing underground storage tank system shall provide the following information on the permit application form:

1. The results of at least one boring drilled adjacent to the existing underground storage tank system;

i. The boring shall be drilled, and after use sealed in accordance with the well drilling and requirements of N.J.S.A. 58:4A-4.1 et seq.;

ii. The boring may extend not more than 15 feet below the bottom of the tank excavation area;

iii. The boring shall be evaluated for textural analysis of split spoon samples every five feet for the length of the boring using standard methods of classification including, but not limited to, Burmeister, Unified, or United States Department of Agriculture systems. This requirement shall not apply to monitoring systems which are in entirely homogeneous backfill consisting of crushed gravel, clean sand, or pea gravel as recommended by the tank or piping manufacturer; and

iv. The boring shall be examined to determine the highest seasonal water table as indicated by water level measurement or other indicators including but not limited to, mottling (if seen within the maximum extent of the boring);

2. A detailed description of the monitoring device to be installed including, but not limited to, operation requirements, monitoring frequency, written performance claims and their manner of determination, and monitoring points; and

3. A site diagram which accurately indicates the location of all sampling and proposed monitoring points in relation to all underground storage tank system at the

facility. For purposes of proper identification, each monitoring point, sensor, or sampling device shall be designated with a number.

(b) The owner or operator of an underground storage tank system that proposes to install vapor sensors as a discharge monitoring system shall submit the following specific information on the permit application form:

1. The results of soil vapor analyses from at least five borings the manner by which the soil vapor was collected and analyzed, and the basis of any relative measurements such as the manufacturer's calibration curve. Four of the borings shall be located in each of the corners of the proposed or original tank excavation area and one boring shall be performed adjacent to the appurtenant piping.

i. The borings shall be drilled, and after use, sealed in accordance with the well drilling and requirements of N.J.S.A. 58:4A-4.1; and

ii. The borings may not extend more than five feet below the ground surface for the purpose of detecting background contamination of soil gas by field instruments with detection limits of 10 parts per million or less and calibrated to the substance being stored; and

2. Verification of field results through samples analyzed by a New Jersey Certified Laboratory upon request of the Department.

(c) The Department may, in its discretion, require additional borings for those facilities with over 30,000 gallons of storage capacity in one excavation area and/or unusual, complex or long piping configurations.

7:14B-10.4 Additional application requirements for the installation of corrosion protection systems for existing underground storage tank systems.

In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, any owner or operator that intends to install corrosion protection in accordance with N.J.A.C. 7:14B-4.5(c) on an existing underground storage tank system shall provide the Department with plans and specifications and a testing and maintenance schedule designed by a corrosion expert. The submission shall be accompanied by the following certification made by the corrosion expert:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are significant civil and criminal penalties for

submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

7:14B-10.5 Additional application requirements for substantial modifications other than discharge monitoring systems and corrosion protection

(a) In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, the owner or operator of an underground storage tank system that proposes to substantially modify that tank system in any way other than through installation of a monitoring system or corrosion protection shall submit the following information to the Department:

1. A detailed narrative description of the proposed substantial modification; and

2. Three copies of drawings of professional quality that accurately depict the proposed substantial modification. The Department may, in its discretion, require plans and specifications signed and sealed by a New Jersey professional engineer. In addition to this submission, the New Jersey professional engineer shall provide the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

(b) The owner or operator of an existing underground storage tank system who intends to install an interior lining shall do so in accordance with industry standards as specified in N.J.A.C. 7:14B-5.3(b).

(c) For the purposes of the subchapter only, the following activities shall not constitute substantial modifications which require a permit under this subchapter issued by the Department:

1. Installation of vapor control systems required by N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances.

2. Installation of replacement appurtenant piping sections as long as the appurtenant piping meets standards set forth in N.J.A.C. 7:14B-4.2(b) and the entire length of piping from the dispenser to the tank is not being replaced. Replacement of the entire length of piping from the dispenser to the tank shall constitute a new installation and require a permit under this subchapter.

3. Minor repairs which will not:

- i. Involve cutting the tank shell;
 - ii. Affect cathodic protection systems, for example, introducing new unprotected metal parts; or
 - iii. Otherwise affect the storage, capacity, physical configuration or integrity of the facility or its monitoring system;
4. A change in the tank's content where the new hazardous substance is chemically compatible with the tank's construction material or lining;
 5. The installation of a line release detector as required in N.J.A.C. 7:14B-4.5(i); or
 6. Any other activities which, in the opinion of the Department, will not affect storage capacity, physical configuration, or the physical integrity of the facility or its monitoring system.

7:14B-10.6 Public access to permit information

- (a) All completed New Jersey Underground Storage Tank permit application forms, as well as documented information pertaining to the permit, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.
- (b) Interested persons shall request in writing an appointment to review the public records. This written request shall be sent to:

New Jersey Department of Environmental Protection
CN 029
Bureau of Underground Storage Tanks
401 East State Street
Trenton, New Jersey 08625-0029

7:14B-10.7 Display of permit and availability of approved plans

- (a) The owner or operator of an underground storage tank system for which a Department permit has been issued shall prominently display the valid permit at the facility site during the course of the permitted activity and shall make the permit available for inspection by an authorized local, State or Federal representative.
- (b) The owner or operator of an underground storage tank system for which a Department permit has been issued shall maintain one set of approved plans at the facility site during the course of the permitted activity and shall make the approved plans available for inspection by any authorized local, State or federal representative.

7:14B-10.8 Emergency permits

(a) The Department may, in its discretion, issue an emergency underground storage tank permit in the specific instance where:

1. A building's sole source of heat is from an oil burner and that building's underground storage tank system containing heating oil is determined to be leaking.

- i. When this type of underground storage tank system is discovered to have released a hazardous substance into the environment then, in order to reduce the period of time that the building must remain without heat, the owner or operator may request an emergency permit to remove and replace the leaking underground storage tank system.

(b) The owner or operator of an underground storage tank system, requesting an emergency permit, shall contact the Department on the day of the emergency or, when the emergency occurs after business hours, on a weekend or on a holiday, the owner or operator shall contact the Department on the next working day thereafter at (609) 984-3156 for telephone issuance of an emergency permit. The owner or operator shall, within 14 days of receipt of telephone issuance of the emergency permit, submit a formal permit application, including the appropriate fee, to the Department.

(c) The owner or operator shall provide the following information when requesting an emergency permit:

1. Name, address and telephone number of the owner and the operator;

2. A clear and concise factual description of the nature and scope of the emergency;

3. The address and location of the facility where the emergency occurred; and

4. A description of the underground storage tank system installed or repaired, including all features necessary to be in compliance with this chapter.

(d) The Department, upon issuance of an emergency permit, shall assign to the owner or the operator of the underground storage tank system an emergency permit number. The owner or operator shall prominently display the number of the facility and make it available for on-site inspection by any authorized local, State or Federal representative.

7:14B-10.9 Permit expiration

(a) Any permit issued pursuant to this chapter shall expire if the work authorized by the permit is not commenced within 12 months after the effective date of the permit, or if the authorized work is suspended or abandoned for a period of six months at any time after work has begun.

7:14B-10.10 Grounds for denial or revocation of permits

(a) The Department may, in its discretion, deny the issuance of a permit under this subchapter upon a determination of the following:

1. The permit application is incomplete, contains inaccurate information and/or is illegible; or

2. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke a permit upon a determination of the following:

1. The permit application contains false or inaccurate information;

2. An authorized representative is denied access to the site;

3. The owner or operator fails to comply with any requirement of the State Act or this subchapter; or

4. The owner or operator of an underground storage tank system is performing or has authorized an activity which is not in compliance with this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of a permit by a Notice of Intent to Deny a Permit or a Notice of Intent to Revoke a Permit. The Notice shall include:

1. The specific grounds for denial or issuance as set forth in (a) above; or

2. The specific grounds for revocation as set forth in (b) above.

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a permit shall not begin the proposed permitted activities or shall discontinue any ongoing permitted activities.

(f) The Department, in seeking to revoke a permit, shall comply with the procedures and requirements of N.J.A.C. 7:14B-12.

SUBCHAPTER 11. MUNICIPAL ORDINANCES

7:14B-11.1 Local ordinance exemption

(a) This chapter supersedes any law or ordinance regulating underground storage tanks regulated subject to this chapter, enacted by a municipality, county or political subdivision thereof prior to the effective date of this chapter.

(b) No municipality, county or political subdivision thereof shall enact any law or ordinance regulating underground storage tanks regulated subject to this chapter without express permission from the Department in accordance with N.J.A.C. 7:14B-11.2 below.

7:14B-11.2 Local ordinance enactment

(a) A municipality, county or political subdivision thereof may apply to the Department for authority to enact a municipal ordinance that provides rules and regulations that are more environmentally protective than this chapter. The application shall consist of the following:

1. A copy of the proposed ordinance;
2. A resolution from the governing body supporting the proposed ordinance;
3. A written statement setting forth all the provisions of the proposed ordinance which differ from those set forth, or are not found in, this chapter;
4. The legal and environmental basis for the difference; and
5. All supporting facts and data.

(b) A municipality may apply to the Department to continue enforcement or testing activities under an existing ordinance so to affect an uninterrupted monitoring program between the effective date of this subchapter and the dates found in the tank system upgrading schedule of N.J.A.C. 7:14B-4.5(a), (b), (c), (d), (e), (f), (h) and (i).

7:14B-11.3 Department determination

(a) The Department shall, within 180 days of receipt of a written petition from a municipality, evaluate the proposed municipal ordinance to determine whether the exemption is warranted and advise the municipality of its findings.

(b) The Department shall base its determination on the following criteria:

1. The municipal ordinance provides greater environmental protection for unique hydrologic conditions;

2. The municipal ordinance provides greater protection against imminent threats to human health; or

3. The municipal ordinance provides greater environmental protection for wetlands or flood plains.

(c) The Department shall provide public notice of all approvals of municipal ordinances under this section by publishing notice of each approval in the DEP Bulletin.

(d) The municipality, county or political subdivision receiving approval from the Department to adopt the ordinance shall submit to the Department a copy of the final ordinance along with a detailed description of the means by which the local government will enforce the provisions of the ordinance.

(e) The municipality, county or political subdivision that is denied the right by the Department to adopt an ordinance may request an adjudicatory hearing pursuant to N.J.A.C. 7:14B-12.

SUBCHAPTER 12. PENALTIES, REMEDIES AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 General penalty

(a) Failure by an owner or operator of an underground storage tank system to comply with any requirement of the State Act or this chapter may result in denial or revocation of the owner's or operator's registration or permit for the tank system and/or the imposition of civil administrative penalties, issuance of administrative compliance orders, imposition of civil penalties, initiation of civil action for injunctive relief, or petitioning the Attorney General to bring a criminal action in accordance with N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

(b) An owner or operator may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the requirements of N.J.A.C. 7:14-8.4.

7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration and permits, and denial of ordinance adoption

(a) Within 30 calendar days from receipt of notification from the Bureau of Underground Storage Tanks denying or revoking a permit or registration, or denying an ordinance adoption, issued pursuant to N.J.S.A. 58:10A-21 et seq., the Underground Storage of Hazardous Substances Act, the registrant, or political subdivision, may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the registrant, or political subdivision, and its authorized representative, if any;
2. The Underground Storage Tank registration number for the facility (if applicable);
3. The registrant's or political subdivision's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions;
4. Information supporting the registrant's or political subdivision's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing;
5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 30 days after receipt by the registrant or political subdivision shall be denied by the Department.

(c) If the registrant or political subdivision fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Pending the decision on appeal to the Department and upon a typewritten request supporting the ongoing need to use the tank, the Department may stay the revocation of the permit, for good cause shown, upon such terms and conditions as deemed proper. The request for stay of revocation of the permit shall be included in the request for hearing.

SUBCHAPTER 13. UNDERGROUND STORAGE TANK LOAN PROGRAM

7:14B-13.1 Scope and construction

(a) The following shall constitute the rules governing loans from the State Underground Storage Tank Improvement Fund for the replacement or repair of underground storage tanks or for the purpose of installing monitoring systems. These rules prescribe procedures, minimum standards of conduct for borrowers, and standards for obtaining loans for replacement or repair of one or more underground storage tanks.

(b) Loans shall be awarded to eligible applicants depending upon the relative economic hardship of the applicant and availability of money in the Fund.

(c) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law.

7:14B-13.2 Purpose

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., specifically N.J.S.A. 58:10A-36, the Underground Storage Tank Improvement Fund;
2. To establish policies and procedures for administration of funds appropriated pursuant to the above act for the purpose of making State loans to underground storage tank owners for the replacement or repair of one or more underground storage tanks or for the installation of underground storage tank monitoring systems;
3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey; and
5. To establish minimum standards of conduct to prevent conflicts of interest and insure proper administration of loans.

7:14B-13.3 Preapplication procedure

(a) Every applicant may request an informal conference prior to making a formal application for a loan. During the conference the Department shall identify and explain all loan application documents. It shall also identify and answer questions concerning other Departmental permits the applicant

must obtain prior to being awarded a loan. This conference is not part of the application procedure and verbal statements made during the conference shall not bind the Department. Such conferences may be waived at the discretion of the Department.

(b) Questions concerning the program should be directed to:

Department of Environmental Protection
Division of Water Resources
Bureau of Underground Storage Tanks
CN 029
401 East State Street
Trenton, New Jersey 08625

7:14B-13.4 Preliminary procedure for obtaining an underground storage tank loan

(a) Each applicant for an underground storage tank loan shall:

1. Determine if it meets the eligibility criteria of N.J.A.C. 7:14B-13.5;

2. Arrange for a preapplication conference, if necessary; and

3. Complete the application procedures required by N.J.A.C. 7:14B-13.6.

7:14B-13.5 Eligibility of loan recipients and costs

(a) An applicant is eligible for a loan award provided the following requirements are met:

1. The applicant is the owner of the underground storage tank system;

2. The applicant is a small business;

3. The applicant is required to upgrade his or her tank system to meet the requirements of this chapter by:

i. Replacing an underground storage tank system, pursuant to N.J.A.C. 7:14B-4;

ii. Repairing (see N.J.A.C. 7:14B-13.40) underground storage tank system; or

iii. Installing a monitoring system, pursuant to N.J.A.C. 7:14B-6; and

4. The applicant meets the eligibility requirements of this subchapter.

7:14B-13.6 Application procedure

(a) To apply for an underground storage tank loan, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Department at the address specified at N.J.A.C. 7:14B-13.3, on the forms provided for that purpose.

(b) An applicant for an underground storage tank loan shall submit:

1. A completed loan application, which shall include the following information:

i. The name, address and social security number or tax identification number of the applicant;

ii. The name, address and social security number or tax identification number of the owner of the property where the underground storage tank system is located (if different);

iii. The contractual relationship between the owner and operator of the underground storage tank system, if applicable; and a copy of the contractual agreement between the owner and operator of the underground storage tank system;

iv. The name, mailing address, block and lot, and phone number of the business where the underground storage tank system is located;

v. The nature of the ownership, for example, sole proprietorship, partnership, corporation or joint tenancy;

vi. If the owner is a partnership or corporation, a copy of the partnership agreement or articles of incorporation;

vii. The names of all mortgage or lien holders and the original and outstanding balance of all mortgages and liens;

viii. The owner's personal debt including amounts owed on all loans, mortgages or rent payments and credit cards;

ix. A list of suppliers, including name, address, telephone number and contact person; and

x. For a corporation, joint tenancy, or partnership a list of the names, addresses, social security numbers of the principals and officers;

2. In addition to the information submitted on the application form listed above, the applicant shall submit at a minimum, the following information:

i. Copies of the applicant's balance sheet for the last three years;

ii. Copies of the applicant's income statement for the last three years;

iii. A statement of changes in the applicant's financial position for the last three years;

iv. An applicant's year-to-date balance sheet;

v. An applicant's year-to-date income statement; and

vi. Signed income tax returns including all schedules for the last three years;

3. If the financial statements required by (b)2i through v above are not available, the applicant shall be required to submit the following information:

i. Yearly gross receipts and net profit or weekly gross receipts and net profit from all sources of the business for the last three years;

ii. Asset data including value of equipment and property or real estate; and

iii. Debt data including amounts owed on all loans, mortgages or rent payments and credit cards;

4. The borrower shall have collateral in an amount sufficient to adequately secure the loan and that collateral may include a lien on the real and/or personal property of the applicant and/or its owners. Types of collateral may include, at a minimum, mortgages, security interests in equipment, and life insurance policies. The borrower shall submit a certified copy of the deed to any real estate he or she owns;

5. If an applicant intends to use the property on which the tank is located for collateral, then the applicant shall perform a site assessment on the property pursuant to N.J.A.C. 7:14B-9.2;

i. If the site assessment shows there is no contamination on the property, then the applicant may use this property to secure the loan;

ii. If the site assessment confirms a discharge from an underground storage tank on the property, the applicant shall complete the corrective action requirements of N.J.A.C. 7:14B-8 before the property may be used as security for the loan;

6. The applicant shall submit three price proposals for completion of the project;

7. An application evaluation fee of \$250.00 shall be submitted to cover the cost of reviewing the loan application. The Department shall return the application evaluation fee if a loan award is not made;

8. A description of how the applicant plans to repay the loan and pay any other expenses necessary to fully complete the proposed underground storage tank improvement, the steps the owner has taken to implement this plan, and the steps the owner plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award agreement the owner will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete the underground storage tank improvement;

9. A written explanation of the need for the project;

10. A proposed construction schedule for the project;

11. Proof of ownership of the real property on which the underground storage tank is located;

12. The loan applicant shall sign a certification which states the following:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (b)12 above shall be signed by an individual with the power to bind the corporation, company or partnership and, as appropriate, at the levels indicated below:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; and

13. A corporate seal shall be attached to the application if the applicant is a corporation. In cases of joint ownership, all owners of record shall sign the loan applications and bind themselves to the loan award conditions.

(c) Each application shall constitute an undertaking to accept the requirements of this subchapter and the terms and conditions of the loan award agreement.

(d) The Department may require an applicant to submit additional relevant information.

7:14B-13.7 Emergency loan application procedures

(a) An applicant may submit an application after an underground storage tank improvement has been completed under the following emergency conditions:

1. A release has occurred at the facility;
2. There are no other underground storage tank systems available for business operations to continue;
3. The applicant submits an application within 30 days after the work is completed; and
4. The applicant meets the loan award eligibility requirements of N.J.A.C. 7:14B-13.5.

(b) Applications shall be submitted to the address specified at N.J.A.C. 7:14B-13.3.

7:14B-13.8 Use and disclosure of information

All loan applications and other submittals, when received by the Department, constitute public records. The Department shall make them available to persons who request their release, to the extent allowed by New Jersey and Federal law.

7:14B-13.9 Evaluation of application and economic hardship

(a) The Department shall notify the applicant that his or her application has been received and is being evaluated in accordance with the subchapter. Each application shall be subjected to:

1. Preliminary administrative review to determine the completeness of the application;
2. Program evaluation (including technical and financial); and
3. Final administrative evaluation.

(b) Each application shall be evaluated, at a minimum, against the following basic criteria:

1. Monies available in the fund;
2. The application requirement at N.J.A.C. 7:14B-13.6; and
3. The eligibility requirements of N.J.A.C. 7:14B-13.5.

(c) The three price proposals submitted pursuant to N.J.A.C. 7:14B-13.6(b)5 shall be evaluated to determine which

proposal meets the minimum responsive requirements. The Department reserves the right to reject all proposals if the plans and costs are deemed excessive or not in compliance with N.J.A.C. 7:14B-13.2 and N.J.A.C. 7:14B-4 through 6.

(d) The minimum loan award available to any one business is \$5,000 and the maximum award available to any one business is \$100,000.

(e) A financial evaluation of the application shall be conducted to determine the credit worthiness of the applicant, taking into consideration, at a minimum, the following factors:

1. The ability of the applicant to properly manage the loan and the project; and

2. The ability of the applicant to repay the loan.

(f) An economic hardship evaluation shall be conducted in accordance with the following criteria:

ECONOMIC HARDSHIP CRITERIA			
PERCENT		POINTS	SCORE
-----		-----	-----
Gross Receipts/Industry Average Gross Receipts			
50 or less		10	
50.1 - 75		7	
75.1 - 125		5	
125.1 - 150		3	
150.1 or higher		0	
	SUBTOTAL		
Net Profit/Industry Average Net Profit			
50 or less		10	
50.1 - 75		7	
75.1 - 125		5	
125.1 - 150		3	
150.1 or higher		0	
	SUBTOTAL		
Cost of Compliance/Gross Receipts			
8.1 or higher		10	
6.1 - 8		7	
4.1 - 6		5	
2.1 - 4		3	
2 or less		0	
	SUBTOTAL		
Project Type			
Replace Tank		5	
Repairing tank to meet regulations or			

install monitoring systems

3
SUBTOTAL

Degree of Economic Hardship equals total points TOTAL

7:14B-13.10 Loan award schedule

(a) The interest rate, term of the loan and percentage of project cost awarded shall be based on the degree of economic hardship of the loan recipients according to the following schedule:

LOAN AWARD SCHEDULE

Total Criteria Points	Percentage of Total Eligible Project Costs	Interest Rates	Term of the Loan
-----	-----	-----	-----
35	100	2 1/2	10 years
34-28	90	2 1/2	10 years
27-21	75	3 1/2	7 years
20-14	50	4 1/2	5 years
13-7	25	6	5 years
6 or less	Ineligible	Ineligible	Ineligible

(b) Because of the limited amount of money in the Fund, the Department shall give priority to applicants that demonstrate the most severe economic hardship, which means the applicants with the greatest number of criteria points.

7:14B-13.11 Notice of approval or denial

(a) The Department shall notify all applicants in writing by certified mail of the approval or denial of a loan award.

(b) The Department shall identify in writing the reasons for loan denial. A denial of an application shall not preclude its reconsideration or resubmittal by the applicant.

(c) The Department's approval of a loan will be in the form of a notice of intent to award a loan. The notice shall contain the amount of the loan, interest rate, and the term of the loan based upon the Loan Award Schedule at N.J.A.C. 7:14B-13.10(a). Interest rates shall remain fixed during the term of the loan period.

(d) The approved applicant shall submit a fully signed contract between the applicant and contractor, which includes the cost of the project, plans, schedule and signatures of all responsible parties within 90 days of receipt of the notice of intent.

(e) The approved applicant shall submit a non-refundable loan closing fee of \$600.00 within 90 days of receipt of the notice of intent.

(f) The applicant's failure to submit any requested information within the required time period shall make them ineligible for a loan award.

(g) Applicants receiving a notice of intent to award a loan shall obtain all necessary Federal, State and local permits and approvals within 90 days of receipt of the notice of intent to award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Assistant Director.

(h) If subsequent to the issuance of a notice of intent to award a loan the applicant discovers that costs will exceed those previously estimated, or that the scope of the project will be modified, or any other circumstances appear which affect the award of priority points, the applicant shall notify the Department immediately. The Department shall then recalculate, if appropriate, the applicant's priority determination utilizing the new information submitted.

(i) In addition, if any changes in the project costs, scope or other circumstances result in a reduction in the total eligible loan amount from the total amount specified in the notice of intent to award a loan, the notice of intent to award a loan may be recalled and revised to reflect the reduction in the total eligible loan amount approved for the project.

(j) Any applicant receiving a notice of intent to award a loan who decides not to proceed with a project shall notify the Department within 30 days of the date of the notice.

7:14B-13.12 Commitment letter

(a) Upon receipt of the documentation and fee required in N.J.A.C. 7:14B-13.11, the Department shall prepare and transmit by certified mail a Commitment Letter to the approved applicant containing a description of the terms and conditions of the loan award agreement.

(b) The approved applicant for the loan award shall execute the Commitment Letter and return it by certified mail within 30 days. The date, time and location of the loan closing shall be included in the Commitment Letter. The Commitment Letter shall be signed by a person authorized to bind the borrower to the described terms and conditions in the Letter.

7:14B-13.13 Loan award issuance including loan award agreement and promissory note

(a) The Department shall prepare and transmit four copies of the loan award agreement to the applicant.

1. The loan award agreement shall set forth the terms and conditions of the loan, approved project scope, approved project costs, and the approved commencement and completion dates for the underground storage tank project. The loan award agreement and promissory note shall contain the repayment schedule, interest rate, the length of the loan periods and approved project costs, plans and time schedule.

2. The application and required documentation submitted shall become part of the loan award agreement. The loan award agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department in the application process.

(b) The borrower shall submit at the closing, proof of its and its contractors, and subcontractors, compliance with all hazard insurance requirements of the loan award agreement and certify that the insurance is in full force and effect and that the premiums have been paid. At all times during the term of this agreement, the borrowers shall comply with the laws of New Jersey relating to Workman's Compensation Insurance.

(c) The Loan Award Agreement shall consist, at a minimum, of the following terms and conditions:

1. Award of the loan shall create a personal debt of the borrower and a lien or security interest against the borrower's property in the amount of the loan, which lien or security interest may be recorded as appropriate in the county hall of records or with the Secretary of State;

2. If the borrower is any entity other than an individual, a personal guarantee of the principal of the entity may be required. This personal guarantee may be secured by the assets of the guarantor, which lien may be recorded as appropriate in the county hall of records or with the Secretary of State;

3. The Department may require an appraisal, survey, and title search if the borrower's real property is being offered as collateral. Any cost of preparing the documentation of this nature shall be paid by the borrower and it shall be the borrower's responsibility to obtain such services;

4. A borrower may reapply for additional funding, if the loan award project work cannot be performed or completed due to conditions discovered after work has started. This additional funding may be an increase in the amount of the present loan or a separate loan. The borrower may submit a request for additional funding to the address in N.J.A.C. 7:14B-13.3;

5. Any loan awarded pursuant to this subchapter may be prepaid in whole or in part at any time without penalty;

6. All documents, searches, opinions, evidence of insurance and guarantees shall be submitted to the Department prior to disbursement of any monies from the Fund; and

7. The Department's approval of all costs and plans is required prior to disbursement of any monies from the Fund.

7:14B-13.14 Loan Closing

(a) The loan award agreement and promissory note shall be delivered and executed by all parties at the closing.

(b) Prior to closing an update of the financial evaluation will be performed and any required outstanding documentation shall be submitted by the applicant.

(c) The full amount of the borrower's loan shall be disbursed at the loan closing.

7:14B-13.15 Representations and warranties of borrowers

(a) The following representations and warranties shall be made by the borrower when he or she executes the loan award agreement and shall be contained therein:

1. The borrower has power to enter into the loan award agreement and the promissory note evidencing the debt obligation of the borrower to the Department and has authorized the taking of all action necessary to carry out and give effect to the transactions contemplated by the loan award agreement;

2. There is no action or proceeding pending or threatened against the borrower before any court or administrative agency that might adversely affect the ability of the borrower to perform its obligations under the loan award agreement and all authorizations, consents and approvals of governmental bodies or agencies, required in connection with the execution and delivery of the loan award agreement or in connection with the performance of the borrower's obligations under the loan award agreement have been obtained and will be obtained whenever required by the loan award agreement or by law;

3. Neither the execution and delivery of the loan award agreement, the consummation of the transactions contemplated by it, nor the fulfillment of or compliance with the terms and conditions of the loan award agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restrictions or any evidence of indebtedness, agreement or instrument of whatever nature to which the borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing;

4. All tax returns and reports of the borrower required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon the borrower or upon any of its respective properties, assets, income or franchises which are due and payable pursuant to such returns and reports, or pursuant to any assessment received by the borrower have been paid other than those which may be presently payable without penalty or interest;

5. The borrower has, or will have, title to all the collateral whenever acquired or arising free and clear of all liens and claims, encumbrances, set-offs, defenses and counterclaims, and has not made and will not make any assignment, pledge, mortgage, hypothecation or transfer (other than sales or leases in the ordinary course of business) of any such collateral or the proceeds thereof;

6. There has been no material adverse change in the aggregate assets or aggregate liabilities or in the condition, financial or otherwise, of the borrower from that set forth in the financial statements delivered to the Department by the borrower in connection with the loan award agreement;

7. All statements, representations and warranties made by the borrower in its application to the Department and any materials furnished in support of the request for Department financial assistance and this loan award agreement are true. It is specifically understood by the borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the Department as an inducement to make the loan and that if any such statements, representations or warranties were materially false at the time they were made or are breached during the term of the loan award agreement, the Department may, in its sole discretion, consider any such misrepresentation or breach an event of default;

8. The borrower shall pay during the term of this loan award agreement as the same become due, all taxes, assessments and governmental charges which may be required by law or contract to be paid by the borrower. The borrower may in good faith contest such taxes and governmental charges and such taxes and charges may remain unpaid during the period of such contest provided the underground storage tank facility and collateral will not be subject to loss or forfeiture as a result;

9. The borrower shall during the term of the loan award agreement operate and maintain all assets of the borrower in compliance with all governmental laws, ordinances, approvals, rules and regulations which are applicable to and binding upon the borrower;

10. The borrower will not relocate all or any substantial part of its business operation from the facility without the express prior written consent of the Department;

11. Collateral will be kept and maintained at the locations specified in the loan award agreement. The borrower shall not remove the collateral from those locations, except in the normal course of business for temporary periods, without the express prior consent of the Department;

12. The borrower shall join the Department in executing, filing and doing whatever may be necessary under applicable law, to perfect and continue the Department's security interest in the collateral at the borrower's expense;

13. The borrower agrees that it will at all times keep accurate and complete records with respect to the collateral including, but not limited to, a record of all proceeds received therefrom or as a result of the sale thereof;

14. The borrower may not sell, lease, convey, assign, transfer or otherwise dispose of any use or possessory interest in the underground storage tank facility and collateral without the express prior written consent of the Department except that the borrower may grant a utility, access and other easements and rights-of-way which will not impair the borrower's use of the underground storage tank facility and collateral. The Department reserves the right to deny approval of any proposed lease, sublease, assignment or transfer if the lessee, sublessee or assignee does not, in the judgment of the Department, satisfy guidelines for eligibility for Department financial assistance. No permitted subleasing or assignment shall relieve the borrower from primary liability under the loan award agreement;

15. During the term of the loan award agreement the borrower shall continue in business and without the prior written consent of the Department shall not dispose of all or substantially all of its assets and shall not consolidate business with or merge into another entity or permit one or more other entities to consolidate with or merge with the borrower's business;

16. The borrower shall not, without the express prior written consent of the Department:

i. Issue any additional stock;

ii. Declare cash or stock dividends;

iii. Purchase its own stock for value; or

iv. Transfer any excess funds of the borrower, its affiliates or subsidiaries for investment in any other business venture. The term "business venture" does not include bank accounts or certificates of deposit;

17. The borrower shall make no material or substantial changes in the present management or operating control of the borrower without prior notification to the Department;

18. The borrower shall not borrow any funds or grant any liens on the collateral without the express prior written consent of the Department;

19. The borrower, its contractors and subcontractors shall maintain their financial records in accordance with generally accepted accounting principles;

20. The borrower shall maintain the borrower's net worth in an amount not less than that indicated by the borrower's financial statements submitted to the Department; and

21. The borrower shall maintain the borrower's current assets at a level greater than the borrower's current liabilities.

7:14B-13.16 Condemnation

(a) If the underground storage tank facility or the collateral shall be damaged or either partially or totally destroyed or if title to or the temporary use of the whole or any part of the underground storage tank facility or collateral shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable by the borrower under the loan award agreement or under the promissory note.

(b) In the event of any damage, destruction, taking or condemnation of the underground storage tank facility or collateral, the proceeds from any insurance or condemnation award shall be deposited with the Department and applied to the payment of any amounts due on the loan unless the borrower and the Department shall agree to apply the proceeds to the repair, reconstruction, replacement or relocation of the underground storage tank facility or collateral.

7:14B-13.17 Indemnification

(a) The borrower shall covenant and agree that the Department, its members, agents, servants, officers or employees shall not be liable for:

1. Any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the underground storage tank facility or the collateral;

2. Any damage or injury to the persons or property of the borrower, or its officers, agents, servants or employees, or any other person who may be about the underground storage tank facility, caused by any act of negligence of any person (other

than the Department or their members, officers, agents, servants or employees); or

3. Any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the Department in connection with the underground storage tank facility or the collateral.

(b) The borrower shall indemnify, protect, defend and hold the Department, the State of New Jersey, and their respective members, agents, servants, officers and employees (each an "Indemnified Party"), harmless from and against any and all such losses, damages, injuries, costs or expenses and (except for claims, demands, suits, actions or other proceedings brought against an Indemnified Party resulting from willful or wanton misconduct of such Indemnified Party) from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever (except the borrower), and arising or purportedly arising from the loan award agreement, the promissory note or any transaction contemplated in any such documents, or from the construction, ownership and operation of the underground storage tank facility or the collateral.

7:14B-13.18 Effect of loan award

(a) The loan award agreement shall become effective immediately after its execution by the Department and the borrower, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award document.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project.

7:14B-13.19 Repayment of loan

(a) The Department will issue a repayment schedule and coupon book to the borrowers in accordance to the terms and conditions of the loan award agreement.

(b) Copies of signed income tax returns including all schedules shall be submitted each year as long as the loan is outstanding.

7:14B-13.20 Recycling of funds

Subject to Federal and/or State law, funds from repayment of Loans issued under the authority of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and this subchapter, shall be deposited in the Underground Storage Tank Improvement Fund and shall remain available for further disbursements as new loans to be awarded pursuant to this chapter until December 31, 1991.

7:14B-13.21 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan, award contracts and subcontracts pursuant to the loan free from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Assistant Director immediately after such allegation or evidence comes to its attention, and shall periodically advise the Assistant Director of the status and ultimate disposition of any matter.

7:14B-13.22 Project completion certifications

(a) The following project completion requirements shall be satisfied, in addition to requirements prescribed by other statutes, rules and agreements as may be applicable to particular loans:

1. The borrower shall certify that the project was initiated and completed in accordance with all the requirements of this chapter and the loan award agreement and was completed within the time schedule specified in the loan award agreement. The borrower shall sign a certification which states the following:

"I certify under penalty of law that the information provided in this document and its attachments is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 above shall be signed by an individual with the power to bind the corporation or partnership and, as appropriate, at the levels indicated below:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor respectively.

2. A borrower shall obtain a certification from a New Jersey professional engineer stating the underground storage tank repair or replacement, or the installation of monitoring system was done in compliance with this chapter and the loan award agreement. This certification shall be sealed by the

professional engineer and submitted as an attachment to the document required by (a)1 above.

7:14B-13.23 Administrative and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan award agreement to achieve loan objectives and to insure that the purposes set forth in the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., are accomplished.

7:14B-13.24 Access

(a) The borrower and its contractor and subcontractors shall provide access to the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project.

(b) The borrower shall submit to the Department such documents and information as requested by the Department.

1. All borrowers, contractors and subcontractors may be subject to a financial audit.

2. Records shall be retained and available to the Department for a minimum of six years after issuance of the final payment by the Department.

7:14B-13.25 Assignment

The right to receive payment from the State under a loan may not be assigned, nor may payments due under a loan be similarly encumbered.

7:14B-13.26 Publicity and signs

A project identification sign, bearing the emblem of the New Jersey Department of Environmental Protection, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:14B-13.27 Debarment

No borrower shall contract with or allow any of his or her contractors to contract with any person debarred or suspended

pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State.

7:14B-13.28 Project changes and loan modifications

(a) A loan modification means any written alteration of the loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) The borrower shall promptly notify the Assistant Director in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification including, but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objective of a project;
4. Significant, changed conditions at the project site; and/or
5. Changes which may increase or substantially decrease the total cost of a project.

(c) If the Department decides a formal loan amendment is necessary it shall notify the borrower and a formal loan amendment shall be prepared in accordance with N.J.A.C. 7:14B-13.29. If the Department decides a formal loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:14B-13.30 or 13.31, as applicable.

7:14B-13.29 Formal loan award amendments

(a) The Department shall require a formal loan award amendment to change principal provisions of a loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) The Department and borrower shall effect a formal loan award amendment only by a written amendment to the loan award agreement.

7:14B-13.30 Administrative loan changes

Administrative changes by the Department, such as change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, or a change in the payment schedule for underground storage tank loans constitute changes to the loan award agreement (but not

necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the borrower.

7:14B-13.31 Other changes

All other project changes, which do not require formal loan award amendment, require written approval of the Assistant Director.

7:14B-13.32 Defaults

(a) The Department may in writing declare a default in the loan award agreement if it determines:

1. The loan award project has not been completed within 90 days of the closing. An extension may be requested in writing;

2. The loan award project work was not performed in compliance with N.J.A.C. 7:14B-4 through 6;

3. Any representation or warranty made in the loan award agreement or in any report, certificate, financial statement or other instrument furnished in connection with the loan award agreement is false or misleading in any material respect;

4. There is a default in the payment of any installment of the principal or interest on the promissory note and such default has continued unremedied for 30 days;

5. The borrower has failed to observe and perform any covenant, condition or agreement of the loan award agreement required to be performed by the borrower and such failure has continued for a period of 10 days after receipt by the borrower of written notice by the Department specifying the nature of such failure and requesting that it be remedied; or if by reason of the nature of such failure the same cannot be remedied within the said 10 days, the borrower fails to proceed with reasonable diligence after receipt of said notice to cure same;

6. The borrower shall have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been adjudged a bankrupt, or filed a petition or an answer seeking an arrangement with creditors or taken advantage of any insolvency law, or an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; or an order, judgment or decree shall have been entered, without the

application, approval or consent of the borrower by any court of competent jurisdiction approving a petition seeking reorganization of the borrower, or appointing a receiver, trustee or liquidator of the borrower or a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of 45 consecutive days; or file a voluntary petition in bankruptcy or fail to remove an involuntary petition in bankruptcy filed against it within 45 days of the filing thereof; or

7. Failure to observe any of the terms or conditions of the commitment letter of the Department.

7:14B-13.33 Default consequences

(a) Whenever any event of default shall have occurred and be continuing, the Department may take one or more of the following remedial steps:

1. Declare the entire principal amount of the promissory note to be due and payable forthwith, whereupon the promissory note shall become forthwith, due and payable, both as to principal and interest, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained in this loan award agreement or in the promissory note to the contrary notwithstanding;

2. Take any action at law or in equity to collect the payments then due and thereafter to become due under the promissory note or to enforce performance and observance of any obligation, agreement or covenant of the borrower under the loan award agreement;

3. Without further notice or demand or legal process, enter upon any premises of the borrower and take possession of the collateral, all records and items relating to the collateral and, at the Department's request, the borrower will assemble the collateral and such records and deliver them to the Department;

4. Sell the collateral but the Department shall give the borrower reasonable notice of the time and place of any public sale of such collateral or of the time after which any private sale or other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if notice of the sale or other intended disposition is mailed (by certified mail, postage paid) to the borrower at least 10 days prior to the time of such sale or disposition or delivered to the borrower at least five days prior to the time of such sale or disposition. At such sale the Department may sell the collateral for cash or upon credit or otherwise, at such prices and upon such terms as it deems advisable and the Department may bid or become purchaser at such sale, free of the right of redemption, which is hereby waived. The Department may adjourn such sales at the time and place fixed therefor without further

notice or advertisement and may sell such collateral as an entirety or in separate lots as it deems advisable, but the Department shall not be obligated to sell all or any part of such collateral at the time and place fixed for such sale if it determines not to do so. Upon the institution of any such action by the Department, the Department shall be entitled to the appointment of a receiver for the collateral without proof of the depreciation of the value of same; or

5. Terminate all of the borrower's right, title and interest in the facility under the loan award agreement or in equity and the borrower's rights to possession thereof by an action for foreclosure or repossession in accordance with the statutes of the State of New Jersey.

i. Upon the institution of any such action by the Department, the Department shall be entitled to the appointment of a receiver for the facility.

(b) No remedy herein conferred or reserved to the Department is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this subchapter, the loan award agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Department to exercise any remedy reserved to it in this subchapter, it shall not be necessary to give notice other than such notice as may be required in this subchapter.

(c) In the event the borrower should default under any of the provisions of this subchapter or the loan award agreement and the Department shall require and employ attorneys or incur other expenses for the collection of payments due or to become due for the enforcement or performance or observance of any obligation or agreement on the part of the borrower, the borrower shall on demand therefor pay to the Department the reasonable fees of such attorneys and other expenses so incurred by the Department.

(d) The Department shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the borrower if a default shall occur.

7:14B-13.34 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any loan conditions, requirements of this chapter, or loan

award agreement requirement or specifications, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:14B-13.35;
2. Order suspension of the project work pursuant to N.J.A.C. 7:14B-13.36; and/or
3. Terminate or rescind a loan pursuant to N.J.A.C. 7:14B-13.37 and 7:14B-13.38.

7:14B-13.35 Notice of noncompliance

When the Department determines that the borrower is in noncompliance with any condition or requirement of this subchapter or with any loan award agreement specification or requirement, it shall notify the borrower of the noncompliance. The Department may require the borrower, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the borrower, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop work order. The Department may, however, issue a stop work order pursuant to N.J.A.C. 7:14B-13.16 without issuing a notice pursuant to this section.

7:14B-13.36 Stop work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the borrower or noncompliance with the terms and conditions of the loan. The Department shall limit use of a stop work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the borrower an opportunity to discuss the stop work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop work orders shall contain:

1. The reasons for issuance of the stop work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the borrower for materials or services; and
4. Other suggestions to the borrower for minimizing costs.

(c) The Department may, by written order to the borrower (certified mail, return receipt requested) require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any further period to which the parties may agree.

(d) The effect of a stop work order is as follows:

1. Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop work order in full or in part;
- ii. Terminate the work covered by such order; or
- iii. Authorize resumption of work.

2. If a stop work order is cancelled or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. An equitable adjustment shall be made in the loan period, the project, or both of these, and the loan award agreement shall be modified accordingly within discretion of the Department.

7:14B-13.37 Termination of loans

(a) The Department may terminate a loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include, but not be limited to, substantial failure to comply with the terms and conditions of the loan, or default by the borrower.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate a loan in whole or in part at least 10 days prior to the intended date of termination, stating reasons for the proposed termination.

2. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested) terminate the loan in whole or in part.

(b) A borrower shall not unilaterally terminate the project work for which a loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The borrower shall promptly give

written notice to the Assistant Director of any complete or partial termination of the project work by the borrower. If the Department determines that there is good cause for the termination of all or any portion of a project for which the loan has been awarded the Department may enter into a termination agreement or unilaterally terminate the loan effective with the date of cessation of the project work by the borrower. If the Department determines that a borrower has ceased work on a project without good cause, the Department may unilaterally terminate the loan pursuant to this section or rescind the loan pursuant to N.J.A.C. 7:14B-13.38.

(c) The Department and borrower may enter into an agreement to terminate the loan at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and loan, basis for settlement of loan termination costs, and the amount and date of payment of any sums due either party.

(d) Upon termination, the borrower shall refund or credit to the State of New Jersey that portion of loan funds paid to the borrower and allocated to the terminated project work, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The borrower shall make no new commitments without Department approval.

1. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.

7:14B-13.38 Rescission of loan

(a) The Department may, in writing, rescind the loan if it determines that:

1. Without good cause therefore, substantial performance of the project work has not occurred;

2. The loan was obtained by fraud; or

3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to rescind the loan. The Department shall afford the borrower an opportunity for consultation prior to rescission of the loan. Upon rescission of the loan, the borrower shall return all loan funds previously paid to the borrower. The Department shall make no further payments to the borrower. In addition, the

Department shall pursue such remedies as may be available under Federal, State and local law.

7:14B-13.39 Administrative hearing

(a) Within 20 calendar days from receipt of a notice of noncompliance, a stop-work order, or a notice terminating the loan award agreement or rescinding the loan pursuant to the procedures in N.J.A.C. 7:14B-13.35 through 13.38, or from receipt of a written notice from the Department denying a loan application pursuant, the applicant or borrower may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the applicant or borrower and its authorized representative, if any;
2. The applicant's or borrower's factual position on each question at issue and its relevance to the Department's decision;
3. Information supporting the applicant's or borrower's factual position and copies of other written documents relied upon to support the request for a hearing;
4. An estimate of the time required for the hearing (in days and/or hours); and
5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the applicant or borrower of the notice being challenged in (a) above, shall be denied by the Department.

(c) During the pendency of the review and hearing, the challenged Department decision shall remain in full force and effect, unless a stay is granted by the Director upon formal request of the recipient.

(d) Following receipt of request for a hearing pursuant to (a) above, the Department may attempt to settle and dispute by conducting such proceedings, meetings, and conferences as deemed appropriate.

(e) If the applicant or borrower fails to include all the information required by (a) above, the Department may deny the hearing request.

(f) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the

Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

7:14B-13.40 Definitions

The following words and terms when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Applicant" means any underground storage tank owner that applies for a loan pursuant to the provisions of this subchapter.

"Assistant Director" means the Assistant Director in the Division of Water Resources in charge of the Ground Water Quality Management Element.

"Balance sheet" means a statement of financial position that reports the assets, liabilities and owners' equity of the business unit at a given time. The statement shall be prepared in accordance with the generally accepted accounting principles.

"Borrower" means an applicant who has received a loan pursuant to the Act and this chapter and has executed a loan award agreement.

"Commitment letter" means a document demonstrating the lender's acceptance of the preliminary loan award which creates a contract to award the loan.

"Credit worthy" means the applicant has the ability to repay the loan and properly manage the loan and project.

"Economic hardship" means a measurement of relative need taking into consideration the applicant's gross receipts and net profits in relationship to the industry average, the cost of compliance, and type of upgrade performed.

"Eligible project cost" means those costs to upgrade the underground storage tank system to meet the requirements of this chapter. Included are the costs for engineering/design services and installation. Ineligible costs shall include, at a minimum, the following:

1. All costs for corrective action, pursuant to N.J.A.C. 7:14B-8;
2. All administrative fees related to the application process;
3. All costs incurred prior to the submission of an application, except under emergency conditions listed in N.J.A.C. 7:14B-13.7;

4. All costs incurred for closure as required by N.J.A.C. 7:14B-9.2 or 3 if the owner does not intend to replace the tank system;

5. Any costs the Department has determined to be excessive; and

6. Any costs not included in the loan award application.

"Eligible project scope" means the repair or replacement of one or more underground storage tanks or installation of a monitoring system on an underground storage tank.

"Fund" means the State Underground Storage Tank Improvement Fund, established by the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., which allocates monies to provide loans to eligible applicants at an interest rate of not more than six percent per year for a term of not more than ten years.

"Gross receipts" means the total receipts of a business prior to deducting expenses.

"Income statement" means a statement of profit and loss which summarizes business activities for a given period and reports the net income or loss resulting from operating and from certain other defined activities. The statement shall be prepared in accordance with generally accepted accounting principles.

"Industry average" means the averages of earnings and financial ratios shown for different industries in the current edition of the Dun & Bradstreet's Industry Norms and Key Business Ratios. A standard based on the combined average gross receipts and average net profits of the industries representing a large segment of applicants, will be utilized when the applicant's industry is not included in the Dun & Bradstreet publication.

"Loan award agreement" means an agreement which constitutes the terms and conditions of the loan award between the Department and the borrower.

"Loan award schedule" means a schedule reflecting the interest rate, loan period and percentage of project costs awarded to eligible applicants.

"Net profit" means the actual profit made during a specific period of business activities, after deducting all costs from the gross receipts.

"Notice of intent to award" means the Department's written notification to an approved loan applicant of the Department's intent to approve a loan.

"Owner" means any person who owns a facility, or in the case of a non-operational storage tank, the person who owned the non-operational storage tank immediately prior to the discontinuation of its use.

"Person" means any individual, partnerships, company, corporation consortium, joint venture, commercial or any other legal entity, the State of New Jersey or the United States Government.

"Property" means the borrower's collateral, either real or personal, that will be used to secure a loan from the underground storage tank improvement fund.

"Repair" means, for the purpose of N.J.A.C. 7:14B-13, the installation of a corrosion protection system, a spill containment device or an overfill protection device on an underground storage tank.

"Small business" means any business which is a resident in this State, independently owned and operated, not dominant in its field and employs fewer than 100 full-time employees.

"Statement of changes in financial position" means a statement of source and application of funds which summarizes the business operations as well as the financing and investing activities of the business for a given period. The statement shall be prepared in accordance with generally accepted accounting principles.

SUBCHAPTER 14. FINANCIAL RESPONSIBILITY

(R E S E R V E D)

SUBCHAPTER 15. CONFIDENTIALITY

7:14B-15.1 Scope and exchange of information

(a) This subchapter sets forth the procedures for making information received by the Department in administering the Underground Storage Tank program under N.J.A.C. 7:14B-1 available to the public and maintaining confidentiality of certain parts of that information.

(b) All information collected by or originated by the Department in connection with underground storage tank regulatory activities under N.J.A.C. 7:14B shall be generally available to the public except as provided otherwise in this subchapter.

(c) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(d) If a request for information is made for interagency or intra-agency memoranda or letters, the Department may deny this request if such request is exempted from disclosure pursuant to 5 U.S.C. 552 (b) (5).

(e) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. 552 (b) (7) or N.J.S.A. 47:1A-3.

(f) When USEPA supplies information to the Department which was submitted to USEPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from USEPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

(g) Notwithstanding any other provision of the subchapter, any information obtained or used in the administration of the underground storage tank program shall be available to EPA and U.S. Department of Justice upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to EPA when providing information as required in this section.

(h) Access to any information for which a confidentiality claim has been made will be limited to Department employees, representative and contractors, whose activities necessitate such access. Also USEPA employees may have access to confidential information subject to (f) above.

(i) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(j) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:14B-15.2 Confidential claims

(a) Any owner or operator of an underground storage tank system required to submit any information pursuant to the Act or this chapter which in the owner's or operator's opinion constitutes trade secrets, proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) Any owner or operator submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One document shall contain all the information required by the Act or this chapter including any information which the owner or operator alleges to be entitled to confidential treatment. The second document shall be identical to the first except that it shall contain no information which the owner or operator alleges to be entitled to confidential treatment. The second document can be a photocopy of the first, with the allegedly confidential material blacked out.

(c) The top of each page of the first document containing the information which the owner or operator alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first document which the owner or operator alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first document, containing the information which the owner or operator alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential document (which may or may not be enclosed in a separate envelope, at the option of the owner or operator), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided below:

New Jersey Department of Environmental Protection
CN 029
Bureau of Underground Storage Tanks
401 East State Street
Trenton, New Jersey 08625-0029

7:14B-15.3 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department when the contractor's activities necessitate such access.

(b) No information may be disclosed to a contractor unless the contract in question provides that the contractor and the contractor's employees, agents and representatives use the information only for the purpose of carrying out the work required by the contract, not disclose the information to anyone not authorized in writing by the Department, store the information in locked cabinets in secure rooms, and return the information to the Department whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

7:14B-15.4 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided for in this subchapter.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the owner or operator who submitted the information.

2. The notice required under this subsection shall be sent by certified mail, return receipt requested and shall state the reasons for the Department's initial determination.

3. An owner or operator who wishes to contest a determination by the Department shall, within 30 days of notification of the determination, submit evidence to support the owner's or operator's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

i. The period of time for which confidential treatment is desired by the owner or operator (for example, until a certain date, until the occurrence of a specified event, or permanently);

ii. The measures taken by the owner or operator to guard against undesired disclosure of the information to others;

iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

iv. The extent to which disclosure of the information would result in substantial damage to the owner or operator, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the relationship between disclosure and the damage.

4. Failure of an owner or operator to furnish timely comments or exceptions waives the owner's or operator's confidentiality claim.

5. The owner or operator may assert a confidentiality claim to any information submitted to the Department by an owner or operator as part of its comments pursuant to (c)3 above.

6. The Department may extend the time limit for submitting comments pursuant to (c)3 above for good cause shown

by the owner or operator and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the owner or operator by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the owner or operator of the written notice.

2. If, after review, the determination is made that the information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The owner or operator shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:14B-15.5 Substantive criteria for use in confidentiality determinations

(a) When the owner or operator satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The owner or operator has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

2. The owner or operator has shown that reasonable measures have been taken to protect the confidentiality of the information and the the owner or operator intends to continue to take such measures;

3. The information is not, and has not been, available or otherwise disclosed to other persons without the owner's or operator's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information; and

5. Except for information related to national security, the owner or operator has shown that disclosure of the

information would be likely to cause substantial damage to its competitive position.

7:14B-15.6 Disclosure of confidential information to USEPA and other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section or N.J.A.C. 7:14B-15.3.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

5. The other agency agrees not to disclose the information further unless:

- i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

- ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted rules or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in N.J.A.C. 7:14B-15.7, the Department shall notify in writing the owner or operator who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which disclosed; and

4. A description of the information disclosed.

7:14B-15.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the owner or operator to such disclosure.

(b) The giving of consent by an owner or operator to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

7:14B-15.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the owner or operator such shorter comment period (see N.J.A.C. 7:14B-15.4(c)4), post-determination waiting period (see N.J.A.C. 7:14B-15.4(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to public health and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it, of itself, be ground for any determination that information is no longer entitled to confidential treatment.

(c) The Department will notify the owner or operator of any disclosure made pursuant to this section as soon as is feasible.

7:14B-15.9 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be marked confidential and opened only by persons authorized by the Department engaged in administering the Act and this chapter.

(b) All submissions entitled to confidential treatment shall be stored by the Department or its contractors only in locked cabinets.

(c) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:14B-15.10 Wrongful access or disclosure; penalties

(a) A person may not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or this chapter, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.